Supreme Court of the United States

OCTOBER TERM, 1969

Nos. 557 and 570

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

—v.—

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,
Respondent,

and

BURNS AND ROE, INC., ETC.,
Petitioner,

—v.—

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, AND NATIONAL LABOR RELATIONS BOARD,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

RELEVANT DOCKET ENTRIES

10. 8.65	Charge filed in Case No. 4-CC-359
11. 5.65	Charge filed in Case No. 4-CD-144
11.17.65	Order consolidating cases, consolidated complaint and notice of hearing, dated
12. 1.65	Respondent's answer to consolidated complaint, received
1. 6.66	Hearing opened
1. 7.66	Hearing closed
1.24.66	Respondent's motion to reopen the hearing, dated
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5.16.66	Hearing closed
9.28.66	Trial Examiner John F. Funke's Decision, issued
11.10.66	Respondent's exceptions to the Trial Examiner's Decision, received
11.14.66	Charging Party's exceptions to the Trial Examiner's Decision, received
11.14.66	General Counsel's exceptions to the Trial Examiner's Decision, received
2.13.67	Decision and order issued by the National Labor Relations Board
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4.25.69	The Decision of the Court of Appeals for the Third Circuit, filed
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2.24.70	The Order of the Supreme Court granting certiorari, dated

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 4-CC-359

LOCAL NO. 825, INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-CIO

and

BURNS & ROE, INC.

Case No. 4-CD-144

LOCAL NO. 825, INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-CIO

and

WHITE CONSTRUCTION COMPANY

DECISION AND ORDER

On September 28, 1966, Trial Examiner John F. Funke issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that those allegations be dismissed. Thereafter, the Respondent, the General Counsel, and the Charging Parties filed exceptions to the Trial Examiner's Decision and supporting briefs. An answering brief was also filed by the Charging Parties.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial

error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision,[1] the exceptions, the briefs, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, insofar as they are consistent with this Decision and Order.

1. We agree with the Trial Examiner that the Respondent violated Section 8(b)(4)(i) and (ii)(D) of the Act, because it was responsible for three separate work stoppages,[2] with an object of forcing White Construction Company, herein called White, to assign work on its electric welding machine to engineers, who are members of Respondent, rather than to ironworkers who are members of Local 350, International Association of Bridge, Structural & Ornamental Ironworkers, AFL-CIO, herein called the Ironworkers.[3] With regard to an earlier work stoppage which occurred on October 1, 1965, and had the same proscribed object, the Trial Examiner found that there was insufficient evidence to hold the Respondent responsible for the strike. We do not agree.

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[1] We specifically disavow the gratuitous, injudicious, and wholly unwarranted remarks contained in footnotes 17 and 26 and on page 9 of the Trial Examiner's Decision.

The following inadvertences contained in the Trial Examiner's Decision are hereby corrected: The name "Norton" is changed to "Wharton" (p. 8, line 22); the correct spelling of one of the employers herein is Poirier; paragraph 7(a) of the complaint refers to the forcing of Chicago Bridge, Poirier, and White to cease doing business with Burns, and paragraph 7(b) refers to the forcing of Burns to cease doing business with White (p. 9, lines 8-10); the words "Board Order" are changed to "broad Order" (p. 13, line 46).

[2] These strikes, which lasted from a few days to several weeks, began on October 7, November 4, and November 16, 1965.

[3] On October 19, 1965, the National Joint Board for Settlement of Jurisdictional Disputes, Building and Construction Industy, herein called the Joint Board, after a proceeding in which all parties participated, issued an award confirming White's assignment of the disputed work to the ironworkers. The complaint herein was issued by the Regional Director for Region 4 in accordance with Section 102.93 of the Board's Rules and Regulations, Series 8, as amended, after the Respondent failed to comply with the aforesaid award. See *Electrical Workers Local 26 (McCloskey & Co.)*, 147 NLRB 1498, 1502-3.

Burns & Roe, Inc., herein called Burns, is a general contractor for Jersey Central Power and Light Company, which is constructing a nuclear power generator plant at Oyster Creek, New Jersey. Certain construction work was subcontracted by Burns to White, Chicago Bridge & Iron Co. (herein called Chicago Bridge), and Poirier & McLane Corporation (herein called Poirier). These subcontractors employ operating engineers, ironworkers, carpenters, and laborers. Burns has no construction employees on the job. All the operating engineers on the project are members of the Respondent, which has bargaining contracts with Chicago Bridge and Poirier, but not with Burns and White. Prior to 1963, Burns and White, who are members of Building Contractors Association of New Jersey, were covered by a multiemployer bargaining contract with the Respondent. In January 1964, this Board found the Respondent in violation of Section 8(b)(1)(B) and (3) of the Act for attempting to bargain unilaterally with the individual members of the Association.[4]

As detailed in the Trial Examiner's Decision, during the days immediately preceding October 1, 1965, on which date all the operating engineers employed by White, Chicago Bridge, and Poirier engaged in a work stoppage, Bill Bonatz, Hank Behrend, and Bobbie Illario, agents of the Respondent, were involved in the conduct described below.

In the latter part of September, Chris Gunderson, White's construction superintendent, was approached by Bonatz and Behrend and told that an engineer would be required to push the buttons which operated an electric welding machine recently installed by White on the jobsite. After Gunderson checked with his office and was informed that this work had been assigned to White's ironworkers who were to perform the actual welding, he relayed this information to Bonatz and Behrend. On September 30, Bonatz and Behrend again approached and told Gunderson that they were going "to knock the

[4] *International Union of Operating Engineers, Local 825, et al. (Building Contractors Association of New Jersey)*, 145 NLRB 952, enfd. by consent decree entered by the U.S. Court of Appeals for the Third Circuit on August 5, 1966, in Case No. 22-CB-588 (1-2).

engineers off the crane", and they gave Gunderson three copies of a proposed agreement for White to sign. On that date, the engineer and oiler on the crane stopped work at 10 a.m. and did not return to work until about 1 p.m. on October 1.

On September 29, 1965, Giles Willis, resident construction manager for Burns, was visited by Bonatz and Behrend and told that members of the Respondent employed by subcontractors on the job had taken a vote to cease work unless Burns signed a contract with Respondent. On the next day, Bonatz, Behrend, and Illario approached Willis, who was given copies of the above-mentioned proposed contract and told that, unless Burns signed the contract by the following morning, all the operating engineers would walk off the job. On October 1, at 8 a.m., the same three agents again met Willis and asked if Burns had signed the contract.[5] When Willis replied in the negative, they left his office and proceeded to the parking lot outside the gate and engaged in conversations with the engineers who had gathered there. The engineers, who were employees of White, Chicago Bridge, and Poirier, did not report for work until 1 p.m.

The Trial Examiner viewed the October 1 work stoppage as spontaneous conduct on the part of the engineers and found that the General Counsel did not sustain his burden of proof to show that the strike was authorized or directed by the Respondent. In our opinion, the preponderance of record evidence requires a finding that the Respondent induced and encouraged the engineers to engage in the strike. Thus, Behrend presided at a meeting of all engineers employed on the project which was held on the jobsite a few days prior to October 1. A unanimous vote was taken to strike because of White's refusal to assign the welding machine work to an engineer and because neither White nor Burns had contracts with the

[5] The contract sought from White and Burns provided for Respondent's members to perform the disputed work. The contract also provides that any employer who becomes a party thereto could not subcontract any work covered by the agreement unless the subcontractor agreed in writing to perform all work subject to the terms and conditions of the agreement.

Respondent. Bonatz and Illario were also present at this meeting. Thereafter, there were requests that the work be performed by Respondent's members and threats of work stoppage were made by Respondent's agents. Immediately before the stoppage of October 1, Bonatz, Behrend, and Illario talked to the engineers assembled at the parking lot.[6]

Upon the foregoing facts and the entire record, we find that a preponderance of evidence establishes that the Respondent, with an object to force or require White to assign the disputed work to engineers represented by the Respondent, induced or encouraged employees employed by White, Chicago Bridge, and Poirier to engage in a work stoppage on October 1, 1965, and threatened, restrained, or coerced Burns and these other employers, all in violation of Section 8(b)(4)(i) and (ii)(D) of the Act.

2. Contrary to the Trial Examiner, we find, that the Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act by its work stoppages of October 1 and 7, 1965, as alleged by the complaint in Case No. 4-CC-359.[7]

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[6] Behrend testified that, after the strike began, he reported it to the Respondent's office and that shortly thereafter he received a message from an unidentified individual at that office that "there was some kind of negotiations going on and to get the men back on the job right away". It also appears that the Joint Board was notified of the dispute by telegram immediately after the strike began and the Joint Board requested the general president of International Union of Operating Engineers to direct the Respondent local union to have the men return to work immediately, pending an adjustment of the dispute.

[7] Member Fanning dissents from this finding. His view, expressed in *Local 5, Plumbers Union (Arthur Venneri Company)*, 137 NLRB 828, 834, and 145 NLRB 1580, 1601, and recently in *Millwrights Local Union 1102 (Dobson Heavy Haul, Inc.)*, 162 NLRB No. 6, is that the finding herein that a jurisdictional dispute exists in these consolidated cases precludes a finding that the Respondent's conduct for the purpose of resolving this dispute is also violative of Section 8(b)(4)(B). But see the contrary position taken by a majority of the Board in *Venneri* and *Dobson*, and the recent opinion in *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company)*, 162 NLRB No. 68, wherein the Board found violations of 8(b)(4)(B) and (D) in a consolidated proceeding.

We have found that the Respondent was responsible for the strike of October 1, and in agreement with the Trial Examiner, we have found the Respondent also responsible for the strike of October 7.[8] It is clear that Respondent's strike threats and strikes were in furtherance of the Respondent's primary dispute with White who refused to reassign the welding machine work to engineers represented by the Respondent.[9] It is equally clear that the Respondent sought to achieve the assignment of this disputed work by applying economic pressure on neutrals to the dispute—Burns, the general contractor, and subcontractors Chicago Bridge and Poirier —with an object of causing a disruption of the business relationship among the various employers at the jobsite.[10] Unlike the Trial Examiner, who found the object proscribed by Section 8(b) (4) (B) to be a literal cessation of business, the Board has held that an object such as

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[8] With regard to the strike which began on October 7, the evidence shows that on October 6, the Respondent threatened Willis and Telghman Suffrecal, representatives of Burns and Poirier, repectively, with a strike, and that Langlinais, project manager for Chicago Bridge, was told by the Respondent after the strike was under way that it resulted from the welding machine dispute. Employees of Poirier and Chicago Bridge, engaged in a work stoppage between October 7 and 11. These employees had also ceased work on October 1.

The work stoppages which began on November 4 and 16, 1965, were confined to employees of White, with whom the Respondent had a primary dispute, and are not alleged as violations of Section 8(b) (4) (B).

[9] The General Counsel has argued that the Respondent also had a primary dispute with Burns arising out of the latter's refusal to sign a contract with Respondent, and that White, Poirier, and Chicago Bridge were neutrals enmeshed in that dispute, but we perceive no useful purpose for deciding whether a violation should be predicated upon that theory. We note, however, that the apparent purpose of Respondent's request for a contract from Burns was to obtain the disputed work from White.

[10] See *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company), supra; Millwrights Local Union 1102 (Dobson Heavy Haul, Inc.), supra; Local 1291, International Longshoremen's Association et al. (Pennsylvania Sugar)*, 142 NLRB 257, 261, enfd. 332 F. 2d 559 (C.A. 3).

the Respondent's herein, although something less than a total cancellation of a business relationship, constitutes a "cease doing business" object within the meaning of this section of the Act.[11] Here, therefore, within the meaning of the statute, an object of the Respondent was to force Burns to cease doing business with White, and to force Chicago Bridge and Poirier to cease doing business with Burns in order to compel Burns to cease doing business with White.

3. We agree with the Trial Examiner's recommendation that a broad cease and desist order is required to remedy the Respondent's unfair labor practices found violative of Section 8(b)(4)(D) of the Act. In addition to the work stoppages which stemmed from White's assignment of work, the Respondent has also been involved in jurisdictional disputes concerning the assignment of work by other employers on the Oyster Creek project and has been enjoined by the Court from engaging in other work stoppages on this project.[12] Therefore, until all building and construction work at the Oyster Creek project is completed, we shall order the Respondent to cease and desist from forcing or requiring White or any other employer engaged on the project to assign any work to employees represented by the Respondent rather than to employees represented by another labor organization, except insofar as permitted by Section 8(b)(4)(D) of the Act.

Having found that the Respondent has also engaged in violations of Section 8(b)(4)(B) and because of the Respondent's demonstrated proclivity to engage in unlawful secondary activities, as noted in the Trial Exam-

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[11] *Local 3, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company)*, 140 NLRB 729, 730; *Local 1291, International Longshoremen's Association et al. (Pennsylvania Sugar), supra.*

[12] *Bernard Samoff, Regional Director, et al.* v. *Local No. 825, International Union of Operating Engineers, AFL-CIO*, Civil No. 66-66, consent decree entered on February 1, 1966, by U.S. District Court for the District of New Jersey. See also this Board's Decision and Determination of Dispute, *Local 825, IUOE (Utilities Lines Construction Co., Inc.)*, 159 NLRB No. 131.

iner's Decision, we shall issue a broad cease and desist order to prevent the Respondent from committing future violations in its disputes with White and other primary employers.[13]

Additional Conclusions of Law

1. By inducing and encouraging the employees of Chicago Bridge and Poirier to engage in work stoppages, and by threatening, coercing, and restraining these employers and Burns with an object in each case of forcing or requiring Chicago Bridge and Poirier to cease doing business with Burns, and with a further object of forcing or requiring Burns to cease doing business with White, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

2. The aforesad unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Upon the entire record in these cases and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Local No. 825, International Union of Operating Engineers, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Engaging in, or inducing or encouraging any individual employed by Chicago Bridge & Iron Co., Poirier & McLane Corporation, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any services; or threatening, coercing, or restraining Chicago Bridge & Iron Co., Poirier & McLane Corporation, Burns & Roe, Inc., or any other per-

[13] See *Local 825, International Union of Operating Engineers, AFL-CIO (United Engineers & Constructors, Inc.)*, 138 NLRB 279, 280, enfd. 332 F. 2d 478 (C.A. 3).

son engaged in commerce or an industry affecting commerce, where, in either case, an object thereof is to force or require Chicago Bridge & Iron Co., Poirier & McLane Corporation, or any other person, to cease doing business with Burns & Roe, Inc., or any other person, or to force or require Burns & Roe, Inc., or any other person to cease doing business with White Construction Company, or any other person.

(b) Engaging in, or inducing or encouraging any individual employed by White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any services; or threatening, coercing, or restraining White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, Burns & Roe, Inc., or any other person, where, in either case, an object thereof is to force or require White Construction Company or any other person engaged on the Oyster Creek, New Jersey, project, to assign any work to employees who are represented by the Respondent, rather than to employees who are represented by another labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix".[14] Copies of said notice, to be furnished by the Regional Director for Region 4, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the

[14] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail copies of said notice to the Regional Director for posting by White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, and Burns & Roe, Inc., these companies willing, at all locations where notices to their respective employees are customarily posted.

(c) Notify the Regional Director for Region 4, in writing, within 10 days from the date of this Decision, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C.

FRANK W. MCCULLOCH, Chairman

JOHN H. FANNING, Member

GERALD A. BROWN, Member

NATIONAL LABOR RELATIONS BOARD

[SEAL]

APPENDIX

NOTICE TO ALL MEMBERS

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT induce or encourage any individual employed by CHICAGO BRIDGE & IRON CO., POIRIER & McLANE CORPORATION, or any other employer, to engage in a strike or a refusal in the course of his employment to perform any services; or threaten, coerce, or restrain the above-named companies, and BURNS & ROE, INC., or any other employer, where an object in either case is to force or require CHICAGO BRIDGE & IRON CO., POIRIER & McLANE CORPORATION, or any other employer, to cease doing business with BURNS & ROE, INC., or any other employer, or to force or require BURNS & ROE, INC., or any other employer, to cease doing business with WHITE CONSTRUCTION COMPANY, or any other employer.

WE WILL NOT induce or encourage any individual employed by WHITE CONSTRUCTION COMPANY, CHICAGO BRIDGE & IRON CO., POIRIER & McLANE CORPORATION, or any other employer, to engage in a strike or a refusal in the course of his employment to perform any services; or threaten, coerce, or restrain the above-named companies, and BURNS & ROE, INC., or any other employer, where an object in either case is to force or require WHITE CONSTRUCTION COMPANY, or any other employer engaged on the Oyster Creek, New Jersey, project, to assign any work to employees represented by LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, rather

than to employees represented by another labor organization, except insofar as any such action is lawful under Section 8(b)(4)(D) of the Act.

LOCAL NO. 825, INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-CIO
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the day of posting, and must not be altered, defaced, or covered by any other material.

If members have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1700 Bankers Securities Building, Walnut & Juniper Streets, Philadelphia, Pennsylvania, 19107 (Tel. No. 597-7601).

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

Case No. 4-CC-359

LOCAL NO. 825, INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-CIO

and

BURNS & ROE, INC.

Case No. 4-CD-144

LOCAL NO. 825, INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-CIO

and

WHITE CONSTRUCTION COMPANY

Leo F. Hannon, Esq., and *Burton B. Subrin, Esq.*, of Philadelphia, Pa., for the General Counsel.

Vincent J. Apruzzese, Esq., of Newark, N. J., for the Charging Parties.

Earl S. Aronson, Esq., for *Thomas E. Durkin, Esq.*, of Newark, N. J., for the Respondent.

Before: *John F. Funke*, Trial Examiner.

TRIAL EXAMINER'S DECISION

Statement of the Case

A charge having been filed by Burns & Roe, Inc., herein Burns, on October 8, 1965, against Local No. 825, International Union of Operating Engineers, AFL-CIO, herein Local 825 or the Respondent, alleging Respondent violation Section 8(b)(4)(i) and (ii)(B) of the Act and a charge have been filed by White Construction Company,

herein White, on November 5, 1965, against Respondent alleging it violated Section 8(b)(4)(i) and (ii)(D) of the Act, the General Counsel issued a consolidated complaint against Respondent alleging violation of said Section.

The answer of Respondent denied the commission of any unfair labor practices.

This proceeding with all parties represented was heard before me on January 6 and 7, March 31, April 1 and May 16, 1966, at Philadelphia, Pennsylvania.[1] At the conclusion of the hearing the parties were granted leave to file briefs and briefs were received from the General Counsel.[2]

Upon the entire record and from my observation of the witness[es] including their demeanor while testifying, I make the following:

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[1] The hearing was originally scheduled for December 7, 1965. At the request of counsel for the Respondent the hearing was rescheduled by the Regional Director for Region Four on January 6. On that date the Examiner recessed the hearing until January 7, 1966, at request of counsel for Respondent made through the General Counsel. On January 7, no representative of the Respondent appeared and the hearing was opened, testimony taken and the hearing closed. On January 25, counsel for Respondent, Thomas E. Durkin, Jr., moved to reopen the hearing and, the General Counsel not opposing the motion, the motion was granted by the Trial Examiner by order of February 8, and the date of the reopened hearing was fixed for February 24. The order limited the reopened hearing to cross-examination of the General Counsel's witnesses and to the testimony of Respondent's witnesses and Respondent's documentary evidence. By agreement of the parties the reopened hearing was again postponed to March 21 and, at request of the counsel for the Charging Parties it was again postponed until March 31. At the conclusion of the hearing on April 1, two witnesses under subpena by Respondent failed to appear (one due to illness) so the hearing was recessed indefinitely. The hearing was reopened on May 16, by agreement of the parties and concluded on that date.

[2] A brief was received from the General Counsel on January 25, following the close of the hearing on January 7. At the conclusion of the reopened hearing the General Counsel was given leave to file a supplemental brief and counsel for the Respondent leave to file a brief. A supplemental brief was received from the General Counsel July 1.

Findings and Conclusions

I. The business of the Companies involved

Burns is a New Jersey corporation engaged as engineering constructor for Jersey Central Power & Light Co., at a nuclear power plant at Oyster Creek, New Jersey. During the course of the construction of the Oyster Creek plant Burns purchased materials valued in excess of $50,000 annually from points outside the State of New Jersey.

White is a New York corporation engaged as a subcontractor for Burns at Oyster Creek in the construction of a reactor plant at the site. During the course of construction of this plant White has purchased materials valued in excess of $50,000 annually from points outside the State of New Jersey.

At all times material herein Porier & McLane Corporation, herein Porier, and Chicago Bridge & Iron Co., herein Chicago Bridge, have been engaged as subcontractors for Burns at Oyster Creek.

Burns, White, Porier and Chicago Bridge are engaged in commerce within the meaning of the Act.

II. The labor organizations involved

Respondent and Local Union No. 350, International Association of Bridge, Structural & Ornamental Ironworkers, herein the Ironworkers, are labor organizations within the meaning of the Act.

III. The unfair labor practices

A. *The facts*

1. Background

In September 1964, Burns started construction of a multimillion dollar nuclear power generator plant at Oyster Creek, New Jersey, for Jersey Central Power and Light Company. Burns was the architect engineer and general contractor but employed no construction workers. Construction was subcontracted to White (construction

of the reactor building), to Chicago Bridge (construction of compression chambers, containment vessel and suppression chambers for the reactor) and to Porier (construction of the turbine structure, intake and discharge structures).[3] All the operating engineers on the job were represented by Local 825. Neither Burns nor White had a contract with Local 825, Chicago Bridge and Porier did. Burns had a contract with the International Union of Operating Engineers, and both Burns and White were members of the Building Contractors Association of New Jersey which had had contracts with Local 825 prior to 1963. On January 9, 1964, the National Labor Relations Board in *Local 825, Operating Engineers*, 145 NLRB 952, found Respondent in violation of Section 8(b)(1) and (3) of the Act for attempting to bargain unilaterally with the individual members of the Association.[4]

2. The work stoppage on October 1

Robert C. Kylberg, general superintendent for White until the middle of January 1966, testified that discussion as to the assignment of an electric welding machine to be used at Oyster Creek by White started in August 1965, before White commenced operations at the site. These discussions were conducted with the contractors association (presumably the Building Contractors Association) and it was decided to give the assignment to the Ironworkers. Kylberg testified that this decision was arrived at by "consensus."

Robert A. Escher, president of White, testified that early in September (White started on the job on September 1, 1965), he had a meeting with representatives of the various crafts to discuss the job in general and among those present were Peter Weber, president of Local 825, and T. J. Norton, business agent for the Ironworkers. There was, according to Escher, no discussion

[3] There were other subcontractors who were not involved in the dispute.

[4] The Board issued a supplemental decision in this case on February 2, 1966, which did not relate to or affect the Board's 8(b)(1) and (3) findings.

of the operation of the electric welding machine which did not arrive at the jobsite until on or about September 20.

Chris Gunderson, construction superintendent for White at Oyster Creek, testified that when White installed the electric welding machine at the jobsite in September he was approached by Bill Bonatz, job steward for Local 825, and Hank Behrend, lead engineer for Porier, and was told he needed an engineer to push the buttons which started and stopped the machine.[5] Gunderson called his office and was told that the work had had been assigned to the Ironworkers. When or where Gunderson reported this to Bonatz and Behrend is not disclosed but on September 30 Gunderson was again approached by them and told they were "to knock the men off the crane" (White at this time had one crane operating with an engineer and an oiler) and gave him three

[5] Respondent concedes that Bonatz was an agent of Local 825. It does not concede that two lead engineers, Behrend for Porier and Illario for Chicago Bridge, were agents. A lead engineer, also called a master mechanic, is provided by and designated by Local 825 when five or more engineers are employeed by a contractor at a jobsite. The duties of a lead engineer are defined in Local 825's contract (General Counsel's Exhibit No. 10) Article II, section as follows:

> He shall be responsible for the performance of all duties of Engineers, Apprentice Engineers, Repair Mechanics, Oilers, Firemen, Maintenance Engineers, and other employees under his jurisdiction under the direction of the Employer.
>
> He will not be allowed to operate an Engine, only in the temporary absence of the regular engine. He shall have complete supervision over all repairs made on all machines and other automotive equipment used, when such repairs are done on the job.

The testimony in this case, however, establishes that Behrend and Illario participated with Bonatz in submitting demands upon the contractors, that they warned the contractors when stoppages were to occur and told the contractors what the causes of dispute were. It was Behrend and not Bonatz who call the Newark office of Local 825 when the first walkout occurred. Having joined with the job steward and having displayed authority equal to his when disputes and stoppages arose I think it clear that they acted as agents of Local 825 and there is no evidence that Local 825 ever repudiated this authority.

copies of an agreement with Local 825 for White to sign.[6] According to Gunderson his engineer and oiler stopped work at 10 a.m. on September 30 and did not return to work until about 1 p.m. on October 1.[7]

Giles Willis, resident construction manager for Burns at Oyster Creek, testified that on September 29, 1965, he met in his office at the jobsite with Bill Bonatz and Hank Behrend who told him that members of Local 825 employed by subcontractors at the jobsite had taken a vote to cease work unless Burns signed a contract with Local 825. On the next day Bonatz, Behrend and Bobbie Illario saw Willis, and Illario give him three copies of a standard Local 825 contract[8] and told him that unless Burns signed them all the members of Local 825 employed at Oyster Creek would walk off.[9] The following day, October 1, at 8 a.m. Bonatz, Behrend and Illario again met Willis and asked if Burns had signed that contract and when Willis replied in the negative they left his office. Willis saw them proceed to the parking lot outside the gate where the engineers were gathered and after what appeared to be some discussion the engineers left.

R. T. Daricek, superintendent for Chicago Bridge, testified that on September 30 he met Bonatz and asked him if the rumors were true that the engineers would not work the following day and was told by Bonatz that if Burns did not sign a contract with Local 825 the following morning no engineers would work. When Daricek protested that Chicago Bridge was under contract with Local 825 Bonatz told him that all the contractors must have contracts.

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[6] General Counsel's Exhibit No. 10.

[7] Whether or not White's engineers quit on September 30 the engineers employed by Chicago Bridge and Porier worked that day.

[8] General Counsel's Exhibit No. 4. This exhibit is the same as General Counsel's Exhibit No. 10 which was submitted to White for signature. Both are copies of Local 825's A.G.C. contract.

[9] Although this remark is denied by Illario, I found Willis to be a completely credible witness and I accept his testimony on this point.

Behrend and Bonatz testified that this stoppage took place after the members of Local 825 employed on the job (approximately 35) held a meeting in the Porier shanty on September 28 and expressed disagreement with the policies of Burns and White. Their disagreement with Burns was directed to the failure of Burns to enter into a contract with Local 825 and with White to its failure to contract with Local 825 and with its assignment of work on the welding machine to the Ironworkers. It was the testimony of both witnesses that this was a spontaneous reaction on the part of the members and was not directed nor instigated by any official of Local 825. The members did not go to work on the morning of October 1.

Behrend testified that when the men failed to go to work he called the office of Local 825, spoke to a clerk and informed him of the work stoppage. Subsequently he received a call from Peter Weber, business manager of Local 825, to get the men back on the job "right away." Behrend complied with instructions, made several telephone calls, contacted Bonatz in a restaurant and the work was resumed. There is no evidence, apart from Behrend's testimony that Weber told him the matter had been settled, as to why Weber told him to get the men back to work. (Weber did not testify at the hearing.)

3. The stoppage on October 7

Gunderson testified that on October 6 he still had one engineer and an oiler working for him and that on October 7 neither "showed up." Gunderson called Local 825 at Newark and asked for replacement for the next day. The next day an engineer and oiler appeared at the site, told him they were going to check with the other engineers before going to work and he "didn't see them since." On October 12 the engineers employed by White returned to work. There is no explanation in the testimony of either Gunderson, Kylberg nor Escher, as to the reason for the stoppage nor for the return.

Willis, however, testified that at about 4 p.m. on October 6 Bonatz and Illario came to his office and told him

that unless an operating engineer was assigned to the welding machine there would be no engineers at work the following day and Illario again brought up the failure of Burns and White to sign contracts with Local 825. On that day Burns submitted the dispute over the work assignment to the National Joint Board for the Settlement of Jurisdictional Disputes. (General Counsel's Exhibit Nos. 5 and 6.) Willis told them there would be no change in the assignment unless it was by the Joint Board.

Telghman Suffrecal, general superintendent for Porier, testified that he had 20 operating engineers working on October 6 and that Behrend, shop steward for his engineers,[10] told him he might or might not have engineers the next day. On October 11 Suffrecal again saw Behrend who told him the engineers would return on the 12th. He admitted that Local 825 had no dispute with Porier but that it did have a dispute with Burns and with White.[11] Behrend gave him no other reason for the stoppage. Porier's engineers worked continuously thereafter.

Langlinais, project manager for Chicago Bridge, testified that his engineers did not work on October 7 and that on October 8 he had a conversation with Bonatz in which Bonatz told him that the stoppage was the direct result of the welding machine assignment and the fact that Burns and White did not have a contract with Local 825. The engineers returned on October 12 and worked thereafter. There was no dispute between Chicago Bridge and Local 825.

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[10] Suffrecal was apparently confused since the record is clear that Bonatz was shop steward for all engineers employed at Oyster Creek and that Behrend was lead engineer for Porier. Suffrecal subsequently corrected this testimony.

[11] This statement was denied by Behrend and was the subject of lengthy cross-examination when Suffrecal was recalled on March 31, 1966. Despite Suffrecal's evasive and confusing testimony on the latter date I credit this statement chiefly because the record is barren of any conflict between Porier and Local 825 and the statement was one which would quite likely have been made. Suffrecal was clear and convincing on direct and I credit his testimony on direct.

The only testimony by any representative of Local 825 relating to this stoppage is that of Bonatz. He testified as follows:

> Q. Correct. Now on or about October 6, 1965, did you say to anyone that unless an operating engineer was assigned to the welding machine there would be no operating engineers on the job the following day.
>
> A. Not that I can remember.
>
> Q. There was a work stoppage, was there not, sir, on or about October 7?
>
> A. I believe so, yes.
>
> Q. How did this work stoppage come about, do you know?
>
> A. I believe they started the welding machine.
>
> Q. Now after the welding machines were started, what happened?
>
> A. The men walked off.
>
> Q. Did you tell the men to walk off?
>
> A. No sir.
>
> Q. Well, when the men walked off was there a meeting?
>
> A. No, I think the meeting was prior to that.
>
> Q. When, sir?
>
> A. A week maybe.
>
> Q. This would be the meeting you discussed back on or about October 1 or on or about September 29?
>
> A. I believe so.

Bonatz' statement that he believed the men walked off on this date because White started operating the welding machine may have been made in confusion as to dates. There is no evidence that the machine was started on October 7 and subsequent testimony indicates that the machine was first operated by an ironworker on November 4. (It may have been operated by engineers for 2 days prior to that date.)

4. The work stoppage on November 4

On October 20 the Joint Board notified the parties to the dispute over the welding machine that there was no

reason to disturb the assignment of work on the welding machine to the Ironworkers. (General Counsel's Exhibit No. 7.) On October 26 a meeting was held at the jobsite to discuss the award. Kylberg met with Weber, Behrend, Bonatz and Gatti [12] and went to lunch with Weber and Gatti. Weber told Kylberg that the Joint Board award was all wrong and that the assignment of the welding machine meant a great deal to him. He told Kylberg that if he would work with Local 825 it would be advantageous and that if not there would be complications. According to Kylberg he pointed to a crane a few feet away, asked him how he would like to have three men on the crane instead of two. He also asked him how he would like to have a 30-hour week with triple overtime.[13] President Escher of White was at that time on a business trip and it was agreed to withhold final decision until his return. There is nothing in the record to indicate that Escher had any conversation with Weber after his return until December 1.

Gunderson testified that on November 4 he started the welding machine and that his crane operators walked off and surrounded the machine and it was not operated that day.[14] At this time Bonatz came to him and asked if he had signed a contract with Local 825. At this time the witness' testimony was interrupted and he did not give the remainder of the conversation. Gunderson stated that on the next day he again started the machine and it was again surrounded by his engineers and was not operated. On November 8 a temporary injunction was granted by the District Court (General Counsel's Exhibit No. 11) restraining Respondent from striking, etc.,

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[12] Gatti was a member of Local 825.

[13] On cross-examination counsel for Respondent attempted to draw a distinction between the use of the words "would" and "could" in this conversation. The distinction, to the extent it exists, is that between a direct and implied threat, a distinction not relevant in Section 8(b)(4).

[14] At this time, according to Gunderson, he employed four engineers, Cherry, Bonatz and Gatti and one whose name he could not recall. These were the men who surrounded the machine.

to compel White to assign the work of starting and stopping electric welding equipment at Oyster Creek to employees represented by Respondent rather than to members of any other labor organization. Gunderson could not remember when the men resumed work.

Bonatz testified that he was working on the crane on November 4 and that when the welding machine stated he joined "some of the fellows around the machine." He admitted the machine had been shut off but did not know who did it. He stayed at the welding machine only a few minutes but did not return to his crane. While he testified that the crane was not working he admitted that he did not believe there was anything wrong with it. He did not work November 4 or 5 but again there is no evidence to show when or why he returned.

5. The concrete pump

On November 1 White brought an electric pump to the jobsite to be used for pouring concrete. Gunderson set the pump on November 15 and Bonatz told him he would need an engineer to operate it. Gunderson agreed and told Bonatz to send one out the next day as he wanted to pour on the 17th. On the 16th Illario came out with two additional engineers to act as standbys on the pipe running from the pump and announced that since there were now five engineers on the job he was lead engineer. Gunderson refused to employ the engineers on the ground they were not needed. The next day, the 17th, the same dispute continued and no engineer operated the concrete pump. On that day Ed Smith, Ironworker foreman, told Gunderson the wires on the electric welding machine had been cut and oil poured into the armature. There is no evidence to establish who sabotaged the welding machine. At about noon the other engineers employed by White walked off the job.

Gunderson testified that on either the 16th or 17th [15] he spoke with Illario and that Illario "mentioned the fact that this was more or less because of the electric

[15] While Gunderson testified that it was either on the 16th or 17th and it is a fact that Gunderson and Illario talked on both days the nature of the remark indicates it was probably on the 17th.

welding machine being in operation." Since the only dispute at this time was over the number of engineers to be employed and since Illario, who was bringing out the additional engineers, was the only person directly involved in the dispute there can be no doubt that Illario was referring to the pump dispute and attributing it to the welding machine dispute where an injunction prevented a stoppage.

Robert Escher, president of White, testified that he called Weber at his home on December 1, to find out how to get the men back to work. He told Weber in the course of a conversation which lasted over an hour that he had heard that if he took the electric equipment (the welding machine) off the job and put in gasoline equipment that White could go back to work. According to Escher, Weber answered, "Yes, but you have got to sign a contract." Escher told him he could not sign a contract because there had been a dispute between them ever since 1962 over this. (This refers to the efforts on the part of Local 825 to have members of the Building Contractors Association sign individual contracts.)[16] When Escher tried to discuss the award of the Joint Board Weber told him they (the Joint Board) "didn't know what the hell they were talking about, that this was his work and had been his work historically and that they were just a bunch of dopes and he wasn't going to abide by it and that it meant four hundred new jobs in the State of New Jersey." Weber denied that Norton, president of the International Union of Operating Engineers, had ordered him to put the men back to work, and added that he "didn't have to." Again Weber mentioned such demands as 30-hour week, triple overtime, and four men on a crane.

The engineers who walked off on November 17 returned to work on either December 21 or 22. Again there is no explanation given in the record as to the reason for this return.

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[16] When Escher inquired why Local 825 was supplying engineers on three other White projects in New Jersey, Weber told him he would pull them off the next day. These engineers were never pulled off the White jobs.

B. *Conclusions*

1. Credibility

Credibility is an issue in the case and I have already made certain specific findings which need not be repeated here. It must be noted, however, that two of the General Counsel's witnesses, Suffrecal of Porier and Gunderson of White, who testified forthrightly and without reservation on January 7, were recalled on cross-examination on March 31. On this occasion, confronted for the first time by a representative of the Respondent, their testimony became both evasive and confusing. It was apparent from their conduct on the stand and the hesitancy with which they answered that they were reluctant to testify adversely to the interests of the Respondent, generally regarded as one of the most powerful local labor organizations in the East. I conclude that their testimony given on January 7 when they were free from any pressures, however imaginary in nature, was truthful. I also base this finding on the fact that this testimony corroborates and fits the pattern of the testimony of other witnesses for the Charging Party whom I have credited in full and who did not weaken under cross. Apart from these two, the General Counsel's witnesses were forthright and credible on both direct and cross-examination.

I might also note that much of the testimony of the witnesses called by Respondent was confusing if not evasive and that no specific finding can be made on much of it.

Where I have credited the testimony of a witness as to a specific conversation I have, *a fortiori*, discredited testimony of other witnesses which was contradictory whether or not such a specific finding has been made.

2. Violations of Section 8(b)(4)(B)

The complaint, paragraphs 7(a) and (b), alleges that the conduct of Respondent as above set forth, *supra*, had among it objects the forcing of Chicago Bridge, Porier and White to cease doing business with White. There is not a scintilla of evidence to support these allegations. On this record Respondent may be found to have two

objectives, (1) to force Burns and White to agree to Local 825's contract in violation of the Board's Order in the *Building Contractors'* case, *supra*, and (2) to force White to assign the operation of the welding machine to its members. Neither objective would have been furthered by a general cessation of business among the parties. Local 825 never made any request upon Chicago Bridge, Porier or White to cease doing business with Burns. Such a request would have been totally irrational for it would have simply forced Burns to employ other subcontractors which, with the possible exception of White, would not have furthered either interest of the Respondent. But Respondent never indicated it wanted White off the job—it wanted to harass White to gain compliance with its requests. Nor was any demand made upon Burns to cease doing business with White. Respondent never suggested that cancellation of the contract would have served its purpose. It did inform Burns, through persons I have found to be its agents, that the failure of Burns and White to sign contracts and the assignment of the work on the job were the sources of the dispute. All Respondent wanted was the work, not a substitution of contractors nor a termination of contractual relationships between the contractors.

The General Counsel attempts to distinguish this case from *Local 825, International Union of Operating Engineers, AFL-CIO (Nichols Electric)*, 138 NLRB 540, enfd. denied, 326 F. 2d 218 (C.A. 3), by stating "there is ample evidence to show Respondent sought these objectives." The brief, which is characterized elsewhere by specificity, give no citation of fact or testimony to support this conclusion and a search of the record reveals no testimony to support it.[17] Neither the General Counsel or any other counsel should so mislead a Trial Examiner. In this case it was necessary for the Trial Examiner to waste his time in a painstaking recheck of the record in search of this alleged "ample evidence." Attor-

[17] The Board has, however, specifically supported misleading briefs on the part of the General Counsel and has reprimanded a Trial Examiner for calling attention to one in *S. Klein's Department Stores, Inc.*, 149 NLRB 466.

neys for the General Counsel should regard themselves as bound by the Canon of Ethics of the American Bar Association and it is lamentable that the admonition of a distinguished attorney to his junior associates that they would meet no more unscrupulous adversary in court than counsel for the Government should ever find support.[18]

3. Violations of Section 8(b)(4)(D)

The Respondent has failed to file a brief in this case so its contentions and defenses are subject to speculation on the part of the Trial Examiner. Based solely on the lines of interrogation taken by counsel for the Respondent upon examination of its witnesses and cross-examination of the General Counsel's witnesses I find those defenses to be:

(1) That the work stoppages, at least those of October 1 and 7, were neither authorized nor directed by the Respondent but were spontaneous on the part of the employed members themselves in resentment of the fact that there were no contracts between White and Burns and that operation of the welding machine had been assigned to the Ironworkers.

(2) That the award of the work on the welding machine to the Ironworkers was invalid in that the dispute was submitted to the Board by Burns and not by White and that Burns was not a party to the dispute.

(3) That the work traditionally and historically had been performed by Operating Engineers and not by the Ironworkers.

(4) That the Ironworkers had made no claim to the work.

This proceeding does not follow a Section 10(k) hearing but is brought pursuant to the "Alternative Procedure" as set forth in the Board's Rules and Regulations, Series 8, as amended, Section 102. 93. This section reads:

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[18] Apart from this the case was ably tried and ably briefed by counsel for the General Counsel and as to this specific criticism it must be remembered that counsel operate under direction.

Sec. 102.93 Alternative procedure.—If, either before or after service of the notice of hearing, the parties submit to the regional director satisfactory evidence that they have adjusted the dispute, the regional director shall dismiss the charge and shall withdraw the notice of hearing if notice has issued. If, either before or after issuance of notice of hearing, the parties submit to the regional director satisfactory evidence that they have agreed upon methods for the voluntary adjustment of the dispute, the regional director shall defer action upon the charge and shall withdraw the notice of hearing if notice has issued. If it appears to the regional director director that the dispute has not been adjusted in accordance with such agreed-upon methods and that an unfair labor practice within the meaning of section 8(b)(4)(D) of the act is occurring or has occurred, he may issue a complaint under section 102.15, and the procedure prescribed in sections 102.9 to 102.51, inclusive, shall, insofar as applicable, govern; and sections 102.90 to 102.92, inclusive, are inapplicable.

It has been found that on October 6, 1965, Burns submitted the dispute respecting work on the welding machine to the Joint Board and that on October 19 the Board decided not to disturb the assignment of this work to the Ironworkers. On October 20 it so notified the parties. Burns, White [19] and Local 825 were both bound by Joint Board rulings.

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[19] The contract between Burns and White contained the following clause:

Article 31 Labor Relations

The subcontractor shall be responsible for its own labor relations with any trade or Union representing his employees and he shall negotiate and seek to adjust all disputes between himself and his employees or anyone representing such employees. The same responsibility shall extend to the Lower Tier subcontractors. All contractors in lower Tier subcontractors shall in the settlement of any jurisdictional dispute be bound by the Rules and Procedures of the National Joint

At the hearing the Trial Examiner made certain rulings which are hereby affirmed. He stated that he would not examine the procedures before the Joint Board or determine whether or not Burns was entitled to submit the dispute to that Board. Since all parties appeared the Examiner felt that this issue could not be raised in the instant proceeding. Neither would the Examiner permit the merits of the assignment to be attacked in this proceeding. Whether the work had been traditionally performed by Operating Engineers was not an issue before the Trial Examiner since this was not a 10(k) proceeding. These rulings would eliminate defenses (2) and (3), *supra.*

The fact that the Ironworkers had made no claim to work is equally irrelevant. As the court said in *Carpenters et al.* v. *C. J. Montag & Sons,* 335 F. 2d 216 221 (C.A. 9):

> The fact that one union has the jobs and holds on to them in a polite, non-belligerent manner while the other union uses forbidden tactics to in an effort to get them, or some of them, does not mean that what Congress regarded as the evils of a jurisdictional dispute are not present.

The crux of this case lies in the contention that the work stoppages were not authorized by Local 825. As to the work stoppage of October 1, I would find that the General Counsel has not sustained his burden of proof to show that this stoppage was authorized or directed by Local 825 or its agents.

There is nothing in the record to indicate that either Bonatz, Behrend, or Illario were not conveying to Willis the feeling of the men when they advised him that there would be a stoppage on October 1 if Burns did not sign a contract. Whether this feeling had been generated

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Board where the settlement of jurisdictional disputes and shall make assignments in accordance with such Rules and Procedures.

Escher testified that White had in the past submitted jurisdictional disputes to the Joint Board.

among the men by the agents of Local 825 is open to question but there is insufficient evidence to support such an inference. Among the major difficulties in resolving issues in labor-management relations disputes is the fact that most decisions, both by labor and management, are made *in camera* and full disclosure of the motives of decisions so reached is seldom, if ever given. If the motive is unlawful the more realistic term is never. If simple truthfulness and honesty were ever to prevail the decisional-making process would be an easy one, but truthfulness and honesty are not commonly found when a party is charged with violations of the Act. If people were honest there would be telephones at racetracks. A fact not disputed which supports the conclusion reached is that Behrend reported the walkoff to Newark on the morning of October 1 and that shortly thereafter he was ordered by Weber to get the men back to work. I do not view this walkout without suspicion but resort must be taken to the familiar cliche that suspicion is not proof.[20]

A different conclusion must be reached as to the walkout on October 7. I have credited the testimony of Willis that late in the afternoon of October 6 he was approached by Bonatz and Illario and told that unless an engineer was assigned to the welding machine the men would not work. Suffrecal of Porier was told by his lead engineer, Behrend, on October 6 that he might or might not have men working the next day. Langlinais of Chicago Bridge was told by Bonatz on October 8 that the stoppage was the direct result of the failure of White to assign the welding machine to the members of Local 825. Unlike the work stoppage of October 1 none of Local 825's agents testified that the stoppage was the result of a vote of the members.[21] Since this is that kind of case in which the

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[20] As the court stated in *N.L.R.B.* v. *Local 217, Plumbers, etc. (The Carvel Company)*, 62 LRRM 2257, decided May 26, 1966 (C.A. 1), there is no violation unless the employees are induced and a totally self-generated cessation of work would not be proscribed.

[21] While Behrend testified that he did not tell the men to walk off on October 6 and that he believed the walkout was the result of the vote taken a week earlier his testimony is far from conclusive.

issues must, for the most part, be decided on rather tenuous inferences I find, in view of the warnings given by union representatives, that the walkout was authorized.[22] It is true that these same representatives gave the same warnings of a prospective walkout on October 1 but those warnings were accompanied by statements that the members were making the decision. The warnings which related to the walkout of October 6 did not attribute the decision to the men. It does not seem likely that members of a well disciplined union (and this characterization is based on a review of Board decisions involving Local 825 and this Examiner's recollection of testimony in four cases which he heard in which Local 825 was the Respondent) would again strike on their own initiative after having been ordered back to work on October 1, an order with which they immediately complied.

The motive for the walkout on November 4 is manifest. We have a history of the dispute between Local 825 and the two Charging Parties by that date going back to the time the machine was first installed at Oyster Creek. More importantly we had the jobsite meeting with Weber on October 26 in which Weber told Kylberg that the Joint Board's assignment was all wrong and that the assignment of the welding machine operation meant a great deal to him, a statement which was accompanied by thinly veiled threats to impose burdensome conditions on White. When the machine was first operated by an ironworker on November 4, White's four engineers promptly ceased work and surrounded the machine. At or about the time the engineers ceased work Bonatz went to Gunderson and asked him if White had signed the contract with Local 825.[23] Gunderson told him, "I did not have."

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[22] The inference relates only to the authorization of the walkout. The purpose of the walkout was clearly stated by Local 825's agents.

[23] This contract, submitted to both Burns and to White (General Counsel's Exhibits Nos. 4 and 10) contains an addendum which includes in the job classifications the work on both gas and electric welding machines as part of the equipment to be operated by mem-

The men did not return to work until after the District Court injunction issued on November 8. Nothing could be clearer than that this walkout was proscribed by Section 8(b)(4)(D) of the Act and that the methods employed were in violation of Section 8(b)(4)(i) and (ii)(D).

Such doubt as might exist that the walkout on November 17, when the concrete pump was to start operating, and the demand for additional engineers to operate the pump is resolved by the credited testimony of Gunderson and Escher. Gunderson testified that while he was disputing the number of engineers required to operate the pump with Illario (Gunderson thought one sufficient while Illario was demanding three) Illario stated that the requirement was more or less due to the electric welding machine dispute. Escher, anxious to get the men back to work, called Weber on December 1 and in the course of a lengthy conversation was told that if he replaced the electric machine with a gasoline welding machine (equipment which would be operated by engineers) and signed a contract, the men would go back. While it may have been no more than a coincidence that the wires on the welding machine were cut and oil poured into its armature on that same day, this coincidence does nothing to diminish the General Counsel's case.

In reaching the conclusion that Respondent violated Section 8(b)(4)(i) and (ii)(D) in these three specific work stoppages as above found I have considered the fact that neither Burns nor White had any difficulties with Local 825 until after the welding machine was brought to the jobsite about September 20. White, without a contract, was able to obtain engineers from Local 825 and there was no hint until after September 20 that the failure to contract would occasion trouble on the job. During this entire period White was engaged on three other projects in New Jersey which were not shut down, another indication that the Oyster Creek problem stemmed from the welding machine.

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bers of Local 825. A signing of the contract would therefore accomplish both objectives sought by Respondent—contractual status and the right to operate the machine.

While the Board (Member Leedom dissenting) has held that the mere giving of notice of prospective strike action against a subcontractor to the prime contractor is not a violation of Section 8(b)(4)(ii)(B), *Local Union No. 83, Teamsters, etc. (Marshall & Haas)*, 133 NLRB 1144, I find that case clearly distinguishable from the instant case. In *Marshall & Haas* the prime contractor was not a party to the dispute with the subcontractor and the notice was given to show that the possibility of a stoppage might occur on the job and, presumably, to offer it the chance to settle the dispute. Here Burns was a primary party to the dispute and the threats made to White and the work stoppages were directed to the failure on the part of Burns as well as White to sign a contract. Under such circumstances I find that the threats and coercion directed to White were directed equally to Burns. It was only the fortuitous circumstance that Burns employed no engineers at the jobsite that precluded it from suffering stoppages. I shall therefore include Burns in the Recommended Order.

IV. The remedy

Having found the Respondent engaged in certain unfair labor practices I shall recommend that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.

The General Counsel has requested that a Board Order issue in this case in view of prior violations of the Act by Respondent and its failure to comply with Board Orders.[24] I agree and shall recommend an order in the form requested by the General Counsel.[25]

Upon the foregoing findings and conclusions and upon the entire record in this case, I make the following:

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[24] See *Local 825, Operating Engineers*, 145 NLRB 952; *Local 825 Operating Engineers*, 140 NLRB 458; enfd. 326 F. 2d 213 (C.A. 3); *Local 825, Operating Engineers*, 138 NLRB 279; enfd. 332 F. 2d 478 (C.A. 3); *Local 825, Operating Engineers*, 131 NLRB 452; *Local 825, Operating Engineers*, 120 NLRB 545.

[25] *Local 825, Operating Engineers (United Engineers)*, 138 NLRB 279.

Conclusions of Law

1. By inducing and encouraging individuals employed by Chicago Bridge, Porier and White to engage in work stoppages and refusal in the course of their employment to perform any services, by threatening, coercing and restraining Burns, Chicago Bridge, Porier and White with an object in each case of forcing and requiring White to assign the work of operating its electrical welding machine at Oyster Creek to employees engaged as operating engineers who are represented by Respondent and who are not lawfully entitled to such work rather than to employees engaged as ironworkers who were represented by the Ironworkers and were lawfully entitled to such work, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act.

2. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record, it is recommended that Local Union 825, International Union of Operating Engineers, AFL-CIO, its officers, agents, representatives, successors and assigns shall:

1. Cease and desist from engaging in, or inducing or encouraging any individual employed by Porier & McLane Corporation, Chicago Bridge & Iron Company, White Construction Company, or by any other persons engaged in commerce or in an industry affecting commerce, to engage in, a strike or refusal in the course of his employment to perform any services, or from threatening, coercing, or restraining the above-named plus Burns & Roe, Inc., or any other persons engaged in commerce, where an object thereof in either case is to force or require White Construction Company, or any employer, to assign any work to employees engaged as operating engineers who are represented by Respondent rath-

er than to employees represented by another labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at its place of business at Newark, New Jersey, copies of the attached notice[26] marked "Appendix."[27] Copies of said notice to be furnished by the Regional Director for the Third Region shall, after having been signed by a duly authorized representative of Respondent, be posted by Respondent immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to see that such notices are not altered, defaced or covered by other material. Upon request from the Regional Director, the Respondent shall supply him with a sufficient number of signed copies of said notice for posting by Chicago Bridge, Porier, White and Burns, they willing, at their respective jobsite offices at Oyster Creek and other places of business.

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[26] In keeping with Board policy, see *L. L. Glascock, Inc.*, 160 NLRB No. 74, in which the Board revised Examiner Reel's notice to make it unintelligible to the average employee, the attached notice has been drafted with the purpose of similar obfuscation. It might appear, as it seemingly did to the Trial Examiner in *Glascock*, that it would be the policy of the Board to make its decisions clear to those most vitally affected by them, which in this instance would include union members as well as the employers. Such is not the case. The operating engineer who understands this notice has missed his vocation. He should be deciphering the Dead Sea scrolls.

[27] In the event that this Recommended Order be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "A RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

(b) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision and Recommended Order what steps have been taken by Respondent to comply herewith.[28]

(c) It is further recommended that the complaint insofar as it alleges violations of Section 8(b)(4)(i) and (ii)(B) of the Act be dismissed.

Dated at Washington, D. C.

/s/ John F. Funke
JOHN F. FUNKE
Trial Examiner

[28] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE

TO ALL MEMBERS OF

LOCAL NO. 825, INTERNATIONAL UNION
OF OPERATING ENGINEERS, AFL-CIO

PURSUANT TO

THE RECOMMENDED ORDER OF A TRIAL EXAMINER OF THE

NATIONAL LABOR RELATIONS BOARD
and in order to effectuate the policies of the

NATIONAL LABOR RELATIONS ACT
(AS AMENDED)

we hereby notify you that:

WE WILL NOT induce or encourage any individual employed by CHICAGO BRIDGE & IRON COMPANY, PORIER & McLANE CORPORATION, WHITE CONSTRUCTION CO., INC., or by any other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any services, or threaten, coerce or restrain the above-named Companies and BURNS & ROE, Inc., or any other persons engaged in commerce or a business affecting commerce, where an object in either case is to force WHITE CONSTRUCTION COMPANY, or any employer, to assign work to any employees engaged as operating engineers who are represented by LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, rather than to employees represented by another

labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1700 Bankers Securities Building, Walnut & Juniper Streets, Philadelphia, Pennsylvania 19107 (Tel. No. 597-7601).

[fol. 17]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE THE NATIONAL LABOR RELATIONS BOARD

PROCEEDINGS

TRIAL EXAMINER FUNKE: The hearing will be in order.

Are there any further appearances to be entered at this time.

MR. SUBRIN: I would like to make a statement.

TRIAL EXAMINER: Yes, Mr. Subrin.

MR. SUBRIN: Mr. Trial Examiner following the recess here yesterday I sent a telegram to Mr. Dirkin and to the Union and which I think I should perhaps introduce as General Counsel's Exhibits.

TRIAL EXAMINER: Perhaps you should get the formal exhibits in first.

MR. SUBRIN: I was going to call these General Counsel's Exhibit No. 2, and enter them later.

TRIAL EXAMINER: You can put them in order if you prefer.

MR. SUBRIN: I haven't shown these yet to Mr. Apruzzese. These are the proposed exhibits which have been marked 1-A through 1-N, the formal papers in this case.

MR. APRUZZESE: I have no objection.

TRIAL EXAMINER: They will be received a General Counsel's Exhibit No. 1.

(Thereupon, the documents above-referred to were marked as General Counsel's Exhibit No. 1, for identification and were received in evidence as General Counsel's Exhibit No. 1.)

[fol. 18] MR. SUBRIN: I would like to have the Court Reporter to mark as proposed exhibits, General Counsel's Exhibit No. 2 which are all copies, of course, of telegrams, we sent three actually, one to Mr. Dirkin at his office and one to Mr. Dirkin at the Court where he was appearing, and one to the Union Hall, and we have the return receipts on those which I would like to

have the Court Reporter to mark as General Counsel's Exhibit 3.

(Thereupon, the documents above-referred to were marked as General Counsel's Exhibits Nos. 2 and 3-A, 3-B and 3-C, for identification.)

MR. SUBRIN: Actually I did talk with Mr. Dirkin after that and I think I should mention that also.

TRIAL EXAMINER: Perhaps—

MR. SUBRIN: Can I offer those?

TRIAL EXAMINER: Yes.

Any objection Mr. Apruzzese?

MR. APRUZZESE: No objection.

I would like to read them.

TRIAL EXAMINER: Very well.

MR. SUBRIN: I was finally able to reach Mr. Dirkin shortly after four o'clock at the courthouse where he said he was engaged in a trial of this murder case and I told him or I related to him the substance of the telegram and he said he just couldn't be in two places at one time and that he would not be able to appear today. [fol. 19] However, I suggested to him that he send some representative of his firm or perhaps from the Union or somebody to represent him in this case. I explained to him the circumstances and so on and he said there was no one else in his firm who was capable of handling the case. He just stated he just might be available next week some time, and before the close of the conversation he said he would send a client down. He didn't say whether it would be Mr. Weber or just whom. And the last thing he said right before I hung up, he said, "I will be back to you." What he meant by that I don't know and I haven't heard from him since, so it could be somebody from the Union will eventually show up and they may not.

TRIAL EXAMINER: Well, I think we have been professionally tolerant with Mr. Dirkin's appearance.

I am ready to proceed.

We have all the papers in. Those last two will be received into evidence.

(Thereupon, the documents above-referred to, heretofore marked as General Counsel's Exhibit No. 2 and 3-A through 3-C, for identification were received in evidence as General Counsel's Exhibit No. 2 and 3-A through 3-C.)

TRIAL EXAMINER: Are you ready for the first witness.

MR. HANNON: I don't feel under the circumstances there is any need for an opening statement. I think it is a traditional type case, and in fact it is particular closing point to Local 825, International Union of Oper-
[fol. 20] ating Engineers, and it is a liquid case which is reported at 140 NLRB 415. I think that hearing involved a CC and CD case.

TRIAL EXAMINER: I had a Nichols Electric case which involved a CC. It did not involve a CD.

MR. HANNON: I think there was—

TRIAL EXAMINER: We are talking about two different Nichols Electric cases.

All right.

MR. HANNON: At this time I will call the first witness. Mr. Giles Willis.

Thereupon,

GILES WILLIS

was called as a witness for and on behalf of the General Counsel, and first having been duly sworn by the Trial Examiner, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Hannon:) Give the reporter your name and address.

A Giles Willis, Forked River, New Jersey.

Q By whom are you employed, Mr. Willis?

A Burns and Roe Incorporated.

Q And where are you employed?

A At the Oyster Creek Necular Power Plant for the Jersey Central Power and Light Company.

Q What is being built at Forked River?

[fol. 21] A It is a nuclear power generator station.

Q What is Burns and Roe doing on the job?

A Burns and Roe is the architect engineer and also the constructors.

Q What is the total cost of the job?

A The published cost is $68,000,000.

Q (By the Trial Examiner:) Is Burns and Roe the General Contractor?

A We are acting as General Contractors, sir. All of these subcontractors are in the name of Burns and Roe.

TRIAL EXAMINER: I see.

Q (By Mr. Hannon:) When did the job start?

A I moved to the job site on September of '64.

Q What is your approximate scheduled completion date?

A Our scheduled construction completion date is in May of 1967 and the plant is supposed to go into operation in the fall of '67.

Q Do Burns and Roe have any construction employees of its own on the job?

A No.

Q Who is doing the actual actual construction?

A Various subcontractors.

Q Are these Burns and Roe subcontractors?

A They are.

Q Do you know the job Stewart for the Local 825 Operating Engineers on this job?

[fol. 22] A I do.

Q What is his name?

A Bill Bonatz.

Q Have you had any conversation with Bonatz about this job?

A Yes.

Q When was your first job?

A September 23th.

Q '65?

A '65.

Q When did the conversation take place?

A In my office.

Q Who was there?

A Hank Behren. He is the master mechanic for Poireir and McLane, and Bill Bonatz.

Q What happened then in the conversation with these two men?

A They came into my office about 8:45 in the morning of September the 29th, and informed me that the Operating Engineer employed by our subcontractors had taken a vote and that as a result of this their position was since Burns and Roe was the general contractor on the job the Operating Engineers employed by the various subcontractors on the job would cease to work for these subcontractors on the job after Friday October the 1st unless Burns and Roe had signed an agreement with Local 825.

[fol. 23] Q Does Burns and Roe have an agreement with Local 825?

A No.

Q What relationship does Burns and Roe have with the Operating Engineers?

A We have a national agreement.

Q A national agreement?

A Yes.

Q What happened on the following date, September the 30th?

A On September the 30th at approximately 3:30 in the afternoon I was visited by Hank Behren, Bill Bonatz, Bobbie Illario who was the master mechanic for Chicago Bridge and Iron.

Q Chicago Bridge and Iron another subcontractor?

A Yes, and a Mr. Gatty who was also an employee of Chicago Bridge and Iron.

Q Did Chicago Bridge and Iron and other subcontractor—

A They was a subcontractor.

Q What happened when these men came in?

A Mr. Alario gave me three copies of 825 contract and he told me that unless Burns and Roe had signed a contract with 825 by Friday Morning, October the 1st, all of the Operating Engineers employed by Burns and Roe subcontractors on the job would walk off.

MR. HANNON: I would have marked as General Counsel's Exhibit No. 4, a document.

TRIAL EXAMINER: Yes.

[fol. 24] (Thereupon, the document above-referred to was marked as General Counsel's Exhibit No. 4, for identification.)

Q (By Mr. Hannon:) I will show you, Mr. Willis, what has been marked as General Counsel's Exhibit No. 4, and I will ask you to identify it.

A That is one of the three.

Q One of the three contracts you were handed?

A One of the three copies.

MR. HANNON: I move that General Counsel's Exhibit No. 4, be accepted into evidence.

MR. APRUZZESE: No objection.

TRIAL EXAMINER: It will be received.

(Thereupon, the document above-referred to, heretofore marked as General Counsel's Exhibit No. 4, for identification, was received in evidence as General Counsel's Exhibit No. 4.)

Q (By Mr. Mr. Hannon:) This was on September the 30. What happened on the following morning, Mr. Willis?

A On Friday Morning, October the 1st, at eight o'clock the same parties, Mr. Bonatz, Mr. Behren and Illerio asked if Burns and Roe had signed the contract. I told them we had not. They then proceeded to leave my office.

Q Did you see them then after they left your office?

A After they left the office they went out to the parking lot which was outside of our gate and had conversation with the Operating Engineers that were stand-[fol. 25] ing around and sitting in their cars at that time.

Q What did you see them do then?

A Well, after they had conversations for a few minutes they began to get in their car and leave.

Q (By the Trial Examiner:) Did you know these persons to be members of the Operating Engineers to your own knowledge?

A I have never seen their cards, sir.

Q Have you seen them employed on the job site as Operating Engineers?

A I have seen them employed as Operating Engineers and I have seen them in conversations referred to by officials of the 825 as being Operating Engineers.

Q (By Mr. Hannon:) How long did the Operating Engineers remain off the job then?

A Well, about, between twelve thirty and one o'clock they began to return to their jobs and started up various equipment.

Q Did you have any conversation with any of them?

A Yes. Somewhere between one thirty and two o'clock I had conversation with Bill Bonatz, Bobbie Illerio over in the area of Piorier McLane operation.

Q What was the conversation?

A I asked the two of them why did the Operating Engineers return to the job at this time. I was informed by Alerio that the Operating Engineers on this [fol. 26] job had been instructed by Pete Weber to return to work and that an agreement had been reached with Burns and Roe on the problem.

Q After that date did you have any further conversation with the job stewart or members of Respondent Local?

A Yes.

Q When was it?

A On October the 6th at approximately four o'clock in the afternoon.

Q Who did you meet at that time?

A At that time, Bill Bonatz and Bobbie Illerio came into my office and Bobbie said to me unless an operating engineer is assigned to the welding machine which by the way is owned by White Construction Company, we would not have any operating engineers on the job the following day.

Q What else, if any thing did Alerio say after mentioning the electric welding machine?

A He further said that Burns and Roe didn't have a contract with 825 and neither did White and that the operating engineers were reluctant to work where any subcontractors did not have an agreement with 825.

Q Did you say anything?

A I informed them that Burns and Roe had a National Agreement and was not required by the International Agreement to sign local agreements, and I further informed them that the starting and stopping of the [fol. 27] welding machine in question had been assigned by White to the iron workers and that there would be no change of this assignment only by the International General Corp and to substantiate the fact I showed them a letter from the Chairman of the National Iron Workers to the International President of the Iron Workers and both the Operating Engineers.

MR. HANNON: I will have this document marked as General Counsel's Exhibit No. 5, for identification.

(Thereupon, the document above-referred to was marked as General Counsel's Exhibit No. 5 for identification.)

Q (By Mr. Hannon:) Mr. Willis I will hand to you what has been marked as General Counsel's Exhibit No. 5, for identification.

A Yes.

Q And what is it, sir?

A This is a letter from the National Joint Board to the International President. This is a copy of the letter which I showed to the men in question.

MR. HANNON: I will offer General Counsel's Exhibit No. 5 into evidence.

MR. APRUZZESE: No objection.

TRIAL EXAMINER: It will be received.

(Thereupon, the document above-referred to, heretofore marked as General Counsel's Exhibit No. 5, for identification, was received in evidence as General Counsel's Exhibit No. 5.)

[fol. 28] TRIAL EXAMINER: Has this dispute been submitted to the Joint Board by both parties?

MR. HANNON: I think I can clear that up.

TRIAL EXAMINER: Proceed on with it.

Q (By Mr. Hannon:) Now, this was on the 6th of October, correct, Mr. Willis?

A This was on the 6th of October.

Q Now, the Trial Examiner has just asked a question about submitting, submission to the National Joint Board. Are you familiar with its submission to the National Joint Board concerning the electrical welding equipment on the job site?

A I am.

Q And just when, if at any time, was it or the submission made to the National Labor Board?

A I think it was on the 6th.

Q (By the Trial Examiner:) Of what?

A October. General Counsel made the submission.

MR. HANNON: May I have this marked as General Counsel's Exhibit No. 6, for identification.

(Thereupon, a document above-referred to was marked as General Counsel's Exhibit No. 6, for identification.)

Q (By Mr. Hannon:) Will you identify that, Mr. Willis?

A I do.

Q And what is it?

[fol. 29] A It is a formal committal of the jurisdictional dispute over the assignment of the electrical welding machine.

MR. HANNON: I will offer General Counsel's Exhibit No. 6 into evidence.

MR. APRUZZESE: No objection.

TRIAL EXAMINER: It will be received.

(Thereupon, the document above-referred to, heretofore marked as General Counsel's Exhibit No. 6, for identification, was received in evidence as General Counsel's Exhibit No. 6.)

Q (By Mr. Hannon:) All right, this was on the 6th. What happened on the 7th, Mr. Willis?

A On the 7th no operating engineers reported for work for either McLane, Chicago Bridge and Iron Work Construction.

Q All these companies subcontractors?

A Subcontractors.

Q How long did they remain off?

A October the 7th, October the 8th, and October the 11th.

Q On what date did they return?

A On the 12th.

Q And after the 12th, did you again at any time meet with the job stewart or any of the other individuals that have been in and out of your office?

A On October the 13th at approximately eight o'clock Hank Behren, Bill Bonatz, Bobbie Alerio, Gatty and an- [fol. 30] other man who identified himself as an operating engineer by the name of Cachoose came into my office and informed me that they had some equipment outside the gate which they proposed to bring in and to operate with electricians and the operating engineers who claimed the work and asked me to see if I could keep them from coming in.

I informed them that the work was being, was proposed to be done by Freehold Electric was not a part of our contractural responsibilities on this job and that was work being done by otheres, however, I would contact the parties involved in it and see what I could do. Meanwhile I would keep them out until I had contacted them.

Q Do you know Ray Shinn?

A Yes.

Q Who is Ray Shinn?

A Ray Shinn is the representative of the Local 825 with whom I have been dealing with since I have been on the job.

Q Shinn, did you meet with Ray Shinn about this time?

A Later in the afternoon, about two o'clock Ray Shinn Hank Behren, Bill Bonatz, Alerio, and Cachoose came to my office and asked to see Mr. Garvin.

Q Who is Mr. Garvin?

A Mr. Garvin is Burns and Roe's Labor Relations Consultant.

Q Did you have any conversation with Mr. Shinn?

A Yes, Mr. Garvin, myself went to the conference [fol. 31] room with the parties just named and we when we got in there Mr. Shinn said to us that he was only

interested in discussing the problem with Freehould Electric and not the other problems that we had on the job.

We informed him, at that time, that we had the others and that this was not our responsibility and we could not enter into any conversation on the problem that was connected with Freehold.

Q After this date did you hear anyting or were you informed of an award made by the National Joint Board?

A Yes.

Q About what time was that?

A I received my copy of the National Joint Board award as a result of the meeting on the 19th, and I received my copy on the 21st, I believe.

MR. HANNON: I will have marked for General Counsel Exhibit No. 7, for identification.

(Thereupon, the document above-referred to was marked as General Counsel's Exhibit No. 7, for identification.)

Q (By Mr. Hannon:) Mr. Willis, I will ask you to identify that which has been marked as General Counsel's Exhibit No. 7.

A That is right.

Q That is a copy of the award that came from the National Labor Board?

A Yes. This is a copy of which I have a copy of the [fol. 32] National Joint Board award according to his assignment.

MR. HANNON: I will offer into evidence General Counsel's Exhibit No. 7.

MR. APRUZZESE: No objection.

TRIAL EXAMINER: Ie will be received.

(Thereupon, the document above-referred to, heretofore marked as General Counsel's Exhibit No. 7, for identification, was received inn evidence as General Counsel's Exhibit No. 7.)

Q (By Mr. Hannon:) After you received notification of this award, Mr. Willis, what did you do about it, if anything?

A As soon as I received my copy of this I attempted to contact Ray Shinn of the Operating Engineers and Ted Norton the Business Agent of the Iron Workers in order to set up a meeting to try to implement the decision of the joint Board without any hassel or dispute.

I was unable to contact them by phone. So, I sent them a telegram and received reports of delivery of the telegram, and I requested a meeting of Friday the 22nd about ten o'clock on Thursday night Ray Shinn called me and stated that he had received the telegram and that he had been in contact with Ted Norton and to meet with me at ten o'clock on Friday would be inconvenient for the both of them and asked if I could postpone the meeting until Monday at ten o'clock and I said that I could.

Q What happened on Monday?

A On Monday Ted Norton and Ray Shinn came to [fol. 33] the job site, however, they did not come to see me at all. I saw Ted Norton, in fact I went to lunch with him and while I was having lunch Ray Shinn came in and he said that the meeting was going to be later in the afternoon because he had been informed that Pete Weber would come down to the meeting at three o'clock.

There was no meeting with me.

Q Did you see Pete Weber on the job?

A Not that day.

Q Did you see him on the job the following day?

A The following day I did see him to the extent that I could identify him. He did not come to see me.

Q Did you see where he went?

A He went to White Construction Company's office trailer.

Q (By the Trial Examiner:) Should the record show who Pete Weber is?

Q (By Mr. Hannon:) Will you identify Pete Weber?

A To the best of my knowledge and according to information received from him verbally, he is the Business Agent of Local 825.

MR. HANNON: I would note too, Mr. Trial Examiner, that there is an admission in the answer that Pete Weber is a Business Manager of Local 825.

TRIAL EXAMINER: Very well.

MR. HANNON: I have no futrher questions of this witness.

[fol. 34] Thereupon,

CROSS EXAMINATION

Q (By Mr. Apruzzese:) Mr. Willis, tell us, if you know, approximately how many engineers walked off the job or did not work on October the 1st, the date of the first stoppage?

A How many engineers were employed by the various contractors we have on the job?

Q Well, all right, how many were employed, how many operating engineers?

A I couldn't give you that figure, specifically. I am sure you have people here that could tell you how many each one of them had.

Q Do you have any knowledge or approximately how many there might be on that date, if you know?

A Well, I would estimate somewhere in excess of twenty.

Q And none of these engineers to your knowledge worked on the morning of October the 1st?

A No.

Q Now, then, on October the 7th which I believe you said was the next date the engineers did not work. Do you have any idea, approximately as to how many engineers were employed on the project?

A Any number I would give you would be an estimate. I would say there would be around twenty.

Q Now, to your knowledge, pardon me, was it neces-
[fol. 35] sary as a result of the operating engineers not working—let me rephrase that.

As a result of the engineers not working were any other employees, building craftsman on the job laid off?

A Any information that I would give you relative to this would be second hand or hearsay inasmuch as we do not employ these people and the payroll is covered by others.

Q (By the Trial Examiner:) Did I understand you

correctly to say that Burns and Roe had no contract with Freehold Electric to perform no services for you?

A For Burns and Roe or any of Burns and Roe subcontractor.

Q I was just asking as a matter of curiousity. For whom were they to perform work?

A They were performing work for a contractor of Jersey Central Power and Light Company direct. They are the owners.

TRIAL EXAMINER: Are there any allegations in the complaint that one of the purposes of the work stoppage was to compell Burns and Roe to cease doing business with Freehold Electric?

MR. HANNON: No, the particular reason, the particular point in there was to help us to establish agency relationship.

TRIAL EXAMINER: I have one question before you proceed, before I forget it.

Q You said that certain of these members of 825 with whom you had conversations, and I have forgotten [fol. 36] their names, I believe you said one of them was a steward of 825 and the others were master mechanics employed by the various contractors.

Is that correct?

A That is correct.

Q Now, do you know of your own knowledge whether or not a master mechanic has any duties to perform for the local 825 apart from the duties for the contractor? If you don't know the answer just tell me.

A What was the question again?

Q A master mechanic in this industry frequently perform some services for his local on the job site as well as perform services for the company, the contractor. Do these master mechanics act in any way on behalf of Local 825?

I am just going by my recollection of past cases.

A If you would observe their activity and their conversation and see them running back and forth from one piece of equipment to the other in which operating engineers are operating cranes, bulldozers, front end loaders and so forth you would assume that they were

conducting some business for the union and not for the contractor.

Q I don't know if that answers my question, but I guess that is as far as we can go at this time on that point.

TRIAL EXAMINER: Are we going to introduce any of the Rules and Regulations which establish the duties of master mechanics?

[fol. 37] MR. HANNON: Your Honor, I have subpoenaed the Bylaws of the Local from the Union, from Respondent, and of course they are not here today, however, we do have the various subcontractors on the job and I think they can supply the evidence as to what master mechanics do for them on the job.

TRIAL EXAMINER: Very well.

Q (By Mr. Hannon:) I would ask this, Mr. Willis, you have mentioned three subcontractors that is White, McLane, Chicago Bridge and Iron. Are these the only three subcontractors on the job?

A We have a Lower Tier subcontractor of a former subcontractor. This is American Dewatering who is a lower Tier subcontractor of Public Constructors. They are operating the dewatering system at the present time and have been since the fall of '64.

Q By dewatering you mean that is to remove the water—

A Pumping the water out of the holes and removing it.

Q The actual construction is being done by the three contractors?

A The three that are named are the only ones doing any construction work.

MR. HANNON: I have nothing further.

MR. APRUZZESE: I have one other question.

Q (By Mr. Apruzzese:) Mr. Willis, to your knowledge is Burns and Roe a members of the Building Con-

[fol. 38] tractors Association of New Jersey?

A I think that they are affiliated member.

MR. APRUZESE: No further questions.

TRIAL EXAMINER: You may be excused.

(The witness withdrew.)

MR. HANNON: At this time I will call Chris Gunderson to the stand.

Thereupon,

CHRIS GUNDERSON

was called as a witness for and on behalf of the General Counsel,, and first having been duly sworn by the Trial Examiner, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Hannon:) Be seated and give your name and address to the Reporter, please.

A Chris Gunderson, 2115 Jefferson St.

Q Where are you employed, Mr. Gunderson?

A On Oyster Creek Project in Forked River, New Jersey.

Q By who?

A White Construction Company.

Q What do you do for White?

A I am construction superintendent.

Q What is White doing on that job?

A White is doing the construction of slabs, that is constructing the reactor building.

[fol. 39] Q When did White start the job?

A About the first of September or around there.

Q '65?

A '65.

Q What trades do you employ on the job?

A Iron workers, carpenters, engineers, laborers.

Q What labor organization represents your operatingg engineers?

A Local 825.

Q Do you know a Bill Bonatz?

A Bill Bonatz is the shop stewart of Local 825.

Q When was the first time you met Bill Bonatz on this job?

A The week of September the 20th, 1965, I brought an electric welding machine to the site and I was approached by Bill Bonatz and the lead engineer, Hank

Behren who told me I needed an operating engineer from Local 825.

MR. HANNON: May I have marked for identification General Counsel's Exhibit No. 8.

(Thereupon, the document above-referred to was marked as General Counsel's Exhibit No. 8, for identification.)

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

MR. SUBRIN: Mr. Trial Examiner, the time is now about twenty minutes after ten and I just came from [fol. 40] upstairs where Mr. Dirkin had called us. I spoke with Mr. Dirkin. He was in Newark and he said at nine o'clock this morning he contacted the Local in Philadelphia, the operating engineers to have their attorney call him back and perhaps come over here to substitute for him and he mentioned the name of Mr. Friedman who is a local attorney here representing operating engineers.

I told him that we had gone ahead with a witness at nine o'clock and at that point he seemed a little angry and said that if we wanted to proceed without him and if we felt we were going to ram something down his throat to just go ahead and do it.

I told him it was not our contention, but we were proceeding with the case as directed by the Trial Examiner. He stated he didn't think one day was enough time for him and when he did say that he would call us back when he heard from, I guess either Mr. Friedman or the Philadelphia Local the operating engineers and that is the way we left it. If I have any further conversations with him I will certainly report.

TRIAL EXAMINER: Thank you. We will now proceed.

Q (By Mr. Hannon:) Mr. Gunderson, you were discussing the convention with William Bonatz and Hank Behren about the engineers wanting an operating engineer on the electric welding equipment.

I am going to have you to identify what has been marked as General Counsel's Exhibit No. 8.

[fol. 41] A That is the one on the job rented from—it is an electric welding machine.

MR. APRUZZESE: Mr. Gunderson, will you speak up. It is difficult to hear you.

Q (By Mr. Hannon:) Specifically, what work on that electric welding machine did they want?

A It is used for welding structural steel.

Q And what work did they want? The operating engineers.

A They wanted a man to push the button to start the machine and a man to push the button to stop the machine.

MR. HANNON: I am going to offer General Counsel's Exhibit No. 8 into evidence.

MR. APRUZZESE: No objection.

TRIAL EXAMINER: It will be received.

(Thereupon, the document above-referred to, heretofore marked as General Counsel's Exhibit No. 8, for identification, was received in evidence as General Counsel's Exhibit No. 8.)

Q (By Mr. Hannon:) Now, after this conversation with Bonatz and Behren what happened?

A I told them I would call my office and my office told me to assign the electric welding machine to the Iron Workers Local 350 of Atlantic City on September the 27th.

MR. HANNON: I will have this document marked as General Counsel's Exhibit No. 9, for identification.

[fol. 42] (Thereupon, the document above-referred to was marked as General Counsel's Exhibit No. 9, for identification.)

Q (By Mr. Hannon:) Mr. Gunderson, I will ask you to identify that which has been marked as General Counsel's Exhibit No. 9.

A That is a copy of the assignment.

MR. HANNON: I will offer General Counsel's Exhibit No. 9, into evidence.

MR. APRUZZESE: No objection.
TRIAL EXAMINER: It will be received.

(Thereupon, the document above-referred to, heretofore marked as General Counsel's Exhibit No. 9, for identification, was received in evidence as General Counsel's Exhibit No. 9.)

Q (By Mr. Hannon:) All right, this assignment was made on September the 27th.
What happened after that?
A On September the 30th Hank Behren and Bill Bonatz about ten o'clock approached me and told me they were going to knock the engineers off the crane and handed me three agreements between the operators from Local 825 and asked me to have White Construction to sign the agreement between the White Construction and Local 825.
MR. HANNON: I will have marked for identification as General Counsel's Exhibit No. 10.

(Thereupon, the document above-referred to was marked as General Counsel's Exhibit No. 10, for identification.)

[fol. 43] Q (By Mr. Hannon:) Mr. Gunderson, I will ask you to identify General Counsel's Exhibit No. 10.
A That is one of the copies sent to my office and White Construction.
Q From whom did you receive this?
A From Hank Behren and Bill Bonatz.
MR. HANNON: I will offer General Counsel's Exhibit No. 10 into evidence.
MR. APRUZZESE: No objection.
TRIAL EXAMINER: It will be received.

(Thereupon, the document above-referred to, heretofore marked as General Counsel's Exhibit No. 10, for identification, was received in evidence as General Counsel's Exhibit No. 10.)

Q (By Mr. Hannon:) Now, this was on September 30th you were having a conversation with Behern and Bonatz?
A Yes.

Q Did you have any operating engineers working that day?

A They started in the morning and knocked off at ten o'clock.

Q How many did you have working?

A One eigineer and one oiler.

Q They knocked off at ten o'clock?

A Yes.

Q Had you knocked them off?

A No, they walked off the crane.

[fol. 44] Q What happened after that?

A October the 1st no engineers showed on the job. Bill Cherry the engineer came on the job around one or one thirty in the afternoon and he proceeded to go to the crane and start the crane and I asked him what happened. He said, "Well, things will be settled and he was going to work."

Q He was one of your employees?

A Yes, he was the operator on the crane.

Q How long did the men continue working after this time, that would be October the 1st?

A They worked Monday, Tuesday and Wednesday and Thursday October the 7th, no one showed up.

Q How many men did you have employed on the job on October the 7th?

A I had about seven or nine iron workers performing.

Q How many engineers?

A one engineer and one oiler.

Q What did you have to do about this work force when the operating engineers didn't show up?

A I laid them off.

Q What did you do about getting replacements for these operating engineers?

A I phoned to Newark and spoke to Mr. Mack the dispatcher to send an engineer and an oiler to the project the following morning at 8:00 a.m.

[fol. 45] Q And what happened?

A The following morning one engineer and one oiler unidentified showed up. They told me to check with the

operating engineers on the job before they proceed to go to work. I didn't see them since.

Q They said they were goint to check rate with the operating engineers on the job?

A Yes.

Q Now, this would have been the 7th, the last day that you you had operating engineers working on the job. When did these operating engineers return to the job to work?

A I think it was October the 12th, if I remember.

Q Now, after October 12 did you have any further conversation with Bonatz about the operation of the job?

A Well—

Q I will withdraw that question and ask you after October the 12th, did you at any time attempt to start your electric welding machine?

A On November the 1st, no, the 4th, I started the welding machine.

Q What happened.

A They walked off the crane and surrounded the welding machine.

Q Who walked off?

A The engineers.

[fol. 46] And at that time Bill Bonatz come to me and asked me if I had signed an agreement between White Construction and the Operating Engineers, which I said I did not havee, and he said with words to the effect—

Q Were you able to operate the electric welding machine that day?

A No.

Q Why weren't you able to operate it?

A They surrounded this welding machine physically.

Q That being the operating engineers?

A The operating engineers.

Q All right, what happened on the following day the 5th?

A The same thing.

Q The same thing. They surrounded the welding machine?

A Yes.

Q MR. HANNON: Your Honor, at this time I would like for you to take judicial notice of an order granting temporary injunction in the United States District Court for the District of New Jersey, dated November the 8th, 1965.

TRIAL EXAMINER: You are going to put it in the record?

MR. HANNON: Yes, sir. I will put it in as an exhibit and that will be General Counsel's Exhibit No. 11.

TRIAL EXAMINER: Any objection to its receipt.

MR. APRUZZESE: No objection.

TRIAL EXAMINER: It is received.

[fol. 47] (Thereupon, the document above-referred to was marked as General Counsel's Exhibit No. 11, for identification, and was received in evidence as General Counsel's Exhibit No. 11.)

Q (By Mr. Hannon:) Now, Mr. Gunderson, you are familiar with the fact an injunction was granted by the District Court in New Jersey on November the 8th in part concerning this electric machine, welding machine?

A Yes, on November the 8th, yes.

Q Now, after November the 8th, what work assignments did you make on the Electric Welding Machine?

A The same work assignment, Iron Workers.

Q Starting and stopping the equipment?

A Yes.

Q Now, after November the 8th, after you made this assignment to the Iron Workers did you have any further conversation with Bonatz about the operation of the job?

A Do you have the dates.

Q Let me ask you this. I will withdraw that question.

At any time did you bring any concrete pump on the job?

A On November the 1st I brought an electric pump on the job and I started rigging it up. I started to set the pump on November the 15th.

Q What was this?

A That was a portable concrete pump.

Q Did you have any conversations with Bonatz about [fol. 48] the concrete pump?

A He approached me and tole me on that same portable concrete pump I needed one engineer from Local 825 to operate it.

Q What did you say?

A I told him that the engineer, to get the engineer the following morning because we intended to pour concrete on the 17th, Wednesday.

Q What happened on the following morning?

A The engineer showed up and I signed him up and he went to help the laborers to set up the pump.

Q What happened then?

A At nine thirty Bob Illerio approached me and told me and told me he was sent out from the Union, he was the new master mechanic for White Construction Company and he brought two additional—he told me he would bring two additional engineers to operate on the same portable concrete pump.

Q Did he say what those engineers would do on the concrete pump?

A He said they would connect the piping and the rubber hose the entire length of the core.

Q That would make three operating engineers?

A Three operating engineers on the portable concrete pump.

Q What did you tell them?

[fol. 49] A I told them that I had assigned the piping and the hose to the laborers, and I only wanted one engineer to operate the pump and the rest of the laborers—

Q Did you see Illerio after that?

A Later he came to my office after lunch and brought two engineers and he asked me to sign him up as master mechanic, and the two engineers to operate on the pump which I refused.

Q All right, this was on the 16th?

A Yes.

Q What happened on the following day, the 17th?

A Illerio came to me in the morning and he told me he had brought two additional engineers from Local 825

to work on the American Crane as mechanics which would make two engineers and two mechanics on one crane.

Q What did you do?

A I refused to sign them up.

Q How many operating engineers had you had on the crane after that date?

A If the boom is less than 100 feet I have an engineer and an oiler. If the boom is 100 or mpre I have two engineers.

Q What was the boom on this crane?

A 130 feet.

Q Now, where was your job stewart working that morning, or was he working?

A He was supposed to be working on the crane, on [fol. 50] the American Crane, and he approached me and told me he had various things to do on the crane including the clutch and the crane wouldn't be operating for some time.

Q Did you have any further conversation with him at that time?

A Well, he told me that he was sick being a shop stewart on the job, because Bobbie was overruling his rulings.

Q What was the name of the shop stewart?

A Bill Bonatz.

Q At this time Bill Bonatz was employed by you?

A That is correct.

Q How long had he been employed by you at this time?

A Since he was laid off from Chicago Bridge and Iron.

Q How long had that been?

A Well, I would have to look in my records.

Q When Bonatz first came to you in September was he employed by you then?

A No, he was working for Chicago Bridge and Iron.

Q When Bonatz was talking to you about the operation of the crane the fact that he had to do some work on the clutch had that crane been working the prior evening?

A It was in perfect condition the day before.

Q What happened after your conversation with Bonatz?

A I ordered concrete for ten o'clock. The truck arrived and I put it in position ready to pour concrete. I looked for the engineer operating the pump and I [fol. 51] found him in Piorier McLane's shanty. I told him to go and start the pump. He walked over followed by five additional operating engineers. He came to the pump and I again told him to start the pump. He told me that orders not to start the pump, and he came and he and the five engineers surrounded the pump physically.

Q Can you identify these five engineers?

A Yes. The two engineers was the two he brought in on the 16th, on November the 16th, and the other two was the one he brought in that morning to work on the crane.

Q How long did the men remain around the concrete pump?

A I left the truck there until twelve o'clock and thought they would change their minds and then I dumped the concrete and two men stayed on the pump until about two thirty in the afternoon.

Q When did your operating engineer employees leave the job that day?

A At two or two thirty nobody was there. The crane did not operate the entire day.

Q How about the men on the pump?

A The men on the pump stayed until two thirty that afternoon.

Q What happened then?

A They disappeared. That was on the 17th.

Q How many operating engineers and employees did you have that day?

[fol. 52] A I had two on the American Crane, two on the P.H. which was obsolete. I put the jib on and I couldn't lift the job. Two on the American Crane and one on the pump, the portable pump.

Q And one of these three was Bonatz?

A Yes.

Q Did any of these three ask permission to leave the job before they left?

A No.

Q Were you using the electric welding machine that day?

A It was the 17th. I used the welding machine in the morning up til noon time. At one o'clock I was approached by my iron worker superintendent, Ed Smith and he told me the wires had been cut on both welding machines and oil was thrown in the armature. I was unable to use the welding machine the rest of the life of the job.

Q When had the machine been working before this report from the iron workders?

A Right before lunch.

Q Did any of your operating engineers report for work on the 18th?

A No.

Q Did you see Bonatz that day?

A I saw him early in the morning.

Q Do you recall what your conversation was, if you had any?

[fol. 53] A If White Construction did not have a signed contract with 825, this was it.

Q During the time Illerio came to you on the 16th and the 17th did he make any mention of electrical welding equipment?

A Yeah, he mentioned the fact this was more or less because of the electrical welding machine being in operation.

Q Do you recall when he said that or what time?

A I believe that is the time when he brought the two men in on the crane on the morning of the 17th.

Q If I recall your testimony then no operating engineers reported for work on the 18th of November? How long did the operating engineers remain off the job?

A They come back December the 21st, or the 22nd.

Q During the interium period between the 17th of November and the 21st or 22nd of December what did White do about getting operating engineers to report to the job?

A We sent telegrams, quite a few telegrams to the Union and asked them to return to work.

Q Do you recall in those telegrams what you actually requested them to produce on the job?

A Engineers to the job and one man on the pump.

Q After the engineers left on November the 17th what did you do about your other employees on the job?

A I had to slowly lay them off and shut the job down [fol. 54] on December the 17th.

Q How many other employees did you have on the job on November the 17th?

A I think there were a dozen iron workers, and a couple of iron worker foremen and ten or twelve carpenters and carpenter foremen, and five or six laborers and labor foremen, and the office overhead.

Q You stated the operating engineers reported to the job on or about December the 21st, or 22nd. Now, at that time or thereafter did you have any conversation with Hank Behren about the operation of the job?

A I was told at home on Monday, the 20th, December the 20th to report to work the following morning which was Tuesday the 21st and that the engineers would be on the job and Bill Behren showed up at eight o'clock and Cherry brought the crane down in the afternoon.

Q After that date did you have any conversation with Behren?

A Yes. I heard him say that the job would run smoothly now.

Q Who said this?

A Hank.

Q Did he say anything else?

A Well, we talked about the portable concrete pump. He said the union still require two men on the pump, one [fol. 55] engineer and he called the other one a mechanic.

MR. HANNON: I have no further questions of this witness.

Thereupon,

CROSS EXAMINATION

Q (By Mr. Apruzzese:) Mr. Gunderson, in your testimony I think you first refered to Mr. Hank Behren

or one of the engineers you had been discussing as a lead engineer, and then I think subsequently you also referred to him as a master mechanic.

Now, I ask you this question. Is the lead engineer or master mechanic these terms that you use do they apply to the same men?

A The same men.

Q In other words, sometimes people refer to them as a lead engineer and other times they are referred to as a master mechanic?

A According to contract. There is no master mechanic and no lead engineer.

Q Now, calling your attention to the occasion after there was a National Joint Board Decision on this electric Welding machine, the Joint Board said the contractors assignment should not be changed and it had been the iron workers.

After that when on your job the electric welding machine was started you testified that some engineers sur-[fol. 56] rounded the welding machine.

Now, this is my question, on that occasion who were the engineers, if you know, that surrounded the welding machine?

A My four engineers, two of them I know by name, Cherry and Behren and the shop stewart, Bonatz and Gatty and Bob Arlerio, off and on.

Q All right, you say that these four engineers, Cherry, Bonatz and Gatty surrounded the welding machine?

A That is correct.

Q Now, I will ask you this question. Were Bonatz and Cherry working on one of your cranes?

A Correct.

Q What did they do? How did they get to the welding machine, they left the crane?

A They left the crane and walked to the welding machine.

Q Was your electric welding machine operating when they went to the machine. In other words was it in the course of operating?

A Yes, they shut it off and surrounded the machine.

Q They shut it off and then they surrounded the machine?

A Yes.

Q All right, then I believe you told us that they remained around the machine that day and the following day as well?

A Yes.

Q And did that electric welding machine operate any [fol. 57] time subsequent on that day or the following day when these engineers that you have mentioned surrounded the machine?

A No. It stopped welding.

MR. APRUZZESE: No further questions.

Oh, excuse me, I do have one other area.

Q I think you testified, Mr. Gunderson, on November the 8th, the Federal District Court injunction was entered?

A Yes.

Q Now, I call your attention to November the 9th, the following day, to your knowledge did any operating engineers report to work on the White Construction job on November the 9th?

A You get me on these dates.

Q Only if you know, if you can recall, Mr. Gunderson.

A I don't recollect.

Q (Trial Examiner:) That is your answer? You don't recollect?

A Yes, sir.

TRIAL EXAMINER: He has answered your question. He does not recollect.

MR. APRUZZESE: No further questions.

TRIAL EXAMINER: You may be excused.

(The Witness withdrew.)

TRIAL EXAMINER: At this time I think we will take a five minute recess.

(A short recess was taken.)

[fol. 58] TRIAL EXAMINER: Proceed, gentlemen.

Thereupon,

MR. LANGLINAIS

was called as a witness for and on behalf of the General Counsel, and first having been duly sworn by the Trial Examiner, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Subrin:) State your name and address.
A Langlinais, 128 Graybar Drive, North Lane, New Jersey.
Q By whom are you employed?
A Chicago Bridge and Iron Company Incorporated.
Q What is your title?
A On this project I am manager.
Q Of the Oyster Creek project?
A Yes.
Q Did you get a subpoena to testify at this hearing?
A I did, sir.
Q Do you know who the operating engineers job stewart is at Oyster Creek?
A Mr. Bill Bonatz.
Q Do you know Mr. Bonatz?
A Yes.
Q Were you aware of the stoppage the testimony has indicated on October the 7th at this job site?
A Yes, sir.
[fol. 59] Q At any time did you discuss any problem with this job at Oyster Creek with Mr. Bonatz?
A Yes, sir. As a result of the stoppage.
Q Would you state what hapened?
A This conversation took place, I believe, on the morning of the 8th on the second day of the stoppage. I walked into the job about nine o'clock and walked into the shanty and Mr. Bonatz was in the office and we said "Hello" and exchanged pleasantries and walked outside, and we proceeded to talk about why he and the operating engineers were not working for Chicago Bridge and Iron Company and we had a contact with them. We had to follow our contract and all the past work on this job, and Mr. Bonatz said, "Well this was a direct result of

the welding machines, no contract with Burns and Roe and they could not work without a contract with Burns and Roe or White, and I said, "Well I've got a contract with you. I want you to come back to work." Well, he came to work and it was costing me lots of money and he said, "Well, why didn't I do what Poirier McLane was doing, bill Burns and Roe." I said, I don't know what Poirier McLane is doing and it is none of my business and I can't do this. This is costing me money.

TRIAL EXAMINER: What was Poirier McLane doing with Burns and Roe?

A (The Witness:) According to the operating engineers as job stewart he was submitting a bill to Burns [fol. 60] and Roe for the delay, the expense of the delay of the work stoppage. I don't know this to be a fact, but I am repeating what he said to me.

TRIAL EXAMINER: I just didn't understand what the situation was alleged to have been. I know there was contracts.

He did state that he wanted a contract with Burns and Roe and he wasn't going to work for you or have his men work for you until they got a contract, Local 825 received a contract for Burns and Roe?

A He specifically indicated to me that the men on the job had done this on their own that they had acted as a group and they would work for anybody on the job, Burns and Roe.

Q (By Mr. Subrin:) Was any mention made at this time about the electric welding machine?

A I asked them why they were doing this because the electric welding machine there was no contract, and I said, "Well, why the, why pick on me?" And we proceeded to talk about a letter that Burns and Roe was was supposed to have written to White Construction telling them to assign the welding machine to the Iron Workers instead of to the operating engineers. And I told him that I didn't think such letter existed and he said, oh, yes it did because he had seen it. I am still not aware, I am aware of rumors of the letter, but I have never seen such letter, so I don't know whether it exists or not.

TRIAL EXAMINER: We will take a short recess.

[fol. 61] (A short recess was taken.)

TRIAL EXAMINER: On the record. Proceed.

Q (By Mr. Subrin:) Actually this project is carrying on with all these superintendents here?

A Yes, sir.

Q On these dates, October the 7th and October the 8th, did you make any attempt to get workers from Local 825 hiring hall?

A Yes, I did.

Q Would you describe those attempts?

A Well, about two thirty on the afternoon of the 7th of October we sent a telegram requesting replacements for each of the jobs we had for operating engineers, six I think. Master mechanic, two men on the derrick, compressor man and operating man on the welding machines, and two operators on the welding machine. There were six men and a master mechanic, and then I went back to the job and at about three o'clock I called Local 825 in Newark to ask if they had received the telegram and they said they had not received it at that time. But that they would take the request from me by telephone, and I proceeded to request the same men, and then I asked if I could get their permission to continue to operate the equipment if I would pay the men until the replacements showed up, and tehey wouldn't give me an answer to that question. They told me I would have to have an operator on the equipment.

[fol 62] TRIAL EXAMINER: What specific equipment are we referring to?

A Welding machine, compressor and a derrick.

I tried several times to get him to say I could not run the equipment, but he wouldn't. He would only say that I had to have an operator engineer there to run the equipment and then this was the 7th, the 8th the replacements showed up in the morning and as I understand it none of them would sign up when they found out there were other people employed on the job, other operating engineers that weren't working. They wouldn't take the jobs of these people, and one at a time one came into the shanty and one at a time left and proceeded

to go back to town. We called Local 825 again, I did and talked to Mr. Kahill and Mr. Kahill said that he was aware of the fact the men would not work and why they would not work and that they were on their way back to town.

Q (By the Trial Examiner:) However, at this time you did not get any specific refusal from the offices of Local 825 to send you replacements, but simply when they arrived they would not work?

A That is right.

I asked Mr. Kahill if I could—

Q (By Mr. Subrin:) Do you know who this Mr. Kahill is?

A I never met him personally.

Q Would you be able to identify him any other way, did he say who he was?

[fol. 63] A He is one of the dispatchers in 825's office as I understand it. I don't know his duties there, except it is a name I know and I call when I ask for people.

Q You talked to him before?

A Yes. I tried to get Mr. Cahill to answer my question whether or not I could run the equipment and I would be willing to pay the engineers and he would not answer it. All he would say was that I had to have an operator on the job.

Q (By the Trial Examiner:) Does the complaint allege there was a refusal on the part of Local 825 to send replacements? Is this a separate specific violation of the Act?

MR. HANNON: I don't think that is the specific refusal, in fact they did engage in a stoppage.

TRIAL EXAMINER: That can be a separate violation if you have an exclusive refusal clause.

MR. SUBRIN: I have no other questions.

Thereupon,

CROSS EXAMINATION

Q (By Mr. Apruzzese:) During this period of time when your engineers were not working the project did your company have any labor dispute with Local 825?

A Outside of this job, no, sir.

Q Well, now with regard to this job, the work you were doing?

A No.

[fol. 64] Q In other words your company was was doing, employing operating engineers, were any complaints made to you about any problem with regard to the work your company was doing?

A No, sir.

Q So, you had no complaints from 825 whatsoever?

A No, sir.

MR. APRUZZESE: No further questions.

Yes, I have one other question.

I don't recall whether this was covered.

Q On or about October the 7th which was the date when the engineers would not work and you say you sent a telegram out, do you know approximately how many employees were employed by your company on the project on that date?

A It would be a guess, but I would say it would be a guess of probably around 80, I think.

Q On October the 7th?

A I am just guessing.

Q Yes, I understand, but on October the 8th, the following day would you know approximately how many employees your company had?

A The same number.

Q The same number, now, as a result of the engineers not working was the employment of these people affected?

A Yes, sir. It was.

Q How so?

[fol. 65] A Well, we couldn't run the rig, we couldn't run the welding machines, we couldn't run the compressors, and our work was all around welding machines, and the compressor having need air for the power tools, we did some clean up work, but we were almost at a stand still on Friday the 8th, as I recall we knocked the men off at noon, and again on Monday.

Q Did you lay these people off?

A No, sir, we did not.

Q They were never in fact laid off?
A No, sir.
Q They couldn't effectively work?
A That is true.
MR. APRUZZESE: No further questions.
TRIAL EXAMINER: Thank you, you may be excused.

(The witness withdrew.)

Thereupon,

R. T. DARICEK

was called as a witness for and on behalf of the General Counsel, and first having been duly sworn by the Trial Examiner, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Subrin:) State your name and address.
A R. T. Darick, Forked River, New Jersey.
Q Who do you work for?
A Chicago Bridge and Iron Company.
[fol. 66] Q Where are you presently employed?
A Forked River, New Jersey on the Oyster Creek project.
Q What is your title there?
A Superintendent of construction for Chicago Bridge and Iron Company.
Q Are you here as a result of a subpoena issued by the General Counsel?
A Yes, I am.
Q Now, this is a little out of order since Mr. Langlinais testified first. Will you describe for the record what Chicago Bridge and Iron are doing on this job site?
A Building compression chambers. We are building the containment vessel and supression chamber for the nuclear reactor.
Q When did your portion of the job start?
A December of '64.
Q And you employ operating engineers?
A Yes, we do.

Q What labor organization representative?
A 825.
Q How do you normally go about getting operating engineers for your jobs?
A When we first come to the job we contacted the office direct. If there is a master mechanic on the job we go through the master mechanic in hiring employees.
[fol. 67] Q And when do you have a master mechanic?
A After the fifth man, after we hire the fifth man we automatically receive the sixth, a master mechanic.
Q Since you mentioned this master mechanic will you describe what he does?
A He contacts his office for additional men when I need them.
Q Does he do any labor?
A Manual labor, no.
Q Who was your master mechanic in October of 1964, if you had one? Did you have one?
A In '65.
Q In '65?
A I had Robert Illerio.
Q What would happen if you brought a new piece of equipment on the job?
A He would contact me and tell me the requirements on this particular machinery, and ask me when I figured on starting the machine up, thereby ordering a man for this particular machine.
Q Do you know who the job stewart was at that time for the operating engineers?
A William Bonatz.
Q Who was he working for directly at that time?
A He was working for me.
[fol. 68] Q Chicago Bridge?
A Yes.
Q Did you have an occasion to talk about the operation of the job of Bonatz about this time?
A On September the 30th I heard rumors of work stoppage the following day. I talked to Bill Bonatz in his pickup truck for about ten minutes asking him if this rumor was true, and he said if White and Burns and Roe did not sign a contract before eight o'clock the

following morning ther would be no work the following day.

Q Was there anyth ng else said?

A I asked him why should we be penalized when we had already signed th contract and we were working with the agreement. W had no arguement what so ever why should they penal e this Chicago Bridge when the dispute was with othe contractors.

Q What did he say

A He said all cont actors were required to sign this agreement to work on he project.

Q So, this was on he 30th of September?

A Yes, sir.

Q What happened he following day?

A None of the o erators showed up for work at eight o'clock. No mac nes were operating.

Q What machines re you referring to that you had then?

A Compressor, wel ing machines and a hundred ton [fol. 69] hoist and th derrick.

Q These machines are normally operated by operating engineers?

A That is right.

Q You usually ha men there by eight o'clock?

A Yes, sir.

Q Did you talk t Mr. Bonatz after that day?

A At one thirty I received a telephone call stating that everything had en settled and his men were returning back to work that day.

Q This was from Bonatz?

A Yes.

Q Did they retur

A At the time I as on the telephone with Bill Bonatz I heard the com ressor start up and as soon as I hung up I went out nd told the operators to shut the machine down becaus all my men had already been sent home that day. We d not need a machine.

Q So, did they co e in the next day? Did they come in Monday?

A They did.

Q Did they work the 4th?
A They worked Monday through Wednesday.
Q What happened on Wednesday, Thursday?
A On Thursday, October the 7th they failed to show up again.
[fol. 70] Q Did you see either Mr. Bonatz or Mr. Alerio on Thursday?
A Thursday morning I was talking to Mr. Langlinais on the phone and they passed my office and I called them in and asked them if it was true they were not going to start the machines up Friday that Thursday and he said it was true that they were not starting up the machines.
Q Who was he?
A Bill Bonatz. So, I went back to talk to Mr. Langlinais on the phone and they went about their ways and I didn't see them the balance of the day.
Q And how many operating engineers had you employed the previous day?
A I had at that particulat time eleven operators.
Q And when did they finally come back to work, if they did.
A On October the 12th.
Q And have the operating engineers been working for you since that date?
A They have.
MR. SUBRIN: Those are all the questions I have.

Thereupon,

CROSS EXAMINATION

Q (By Mr. Apruzzese:) Mr. Darick, I have only one question.
On October the 8th which I believe was Friday, Mr. [fol. 71] Langlinais said you had approximately 80 men on a project that day.
Now, do you recall were the men given their wages that day, all your employees.
A On October the 1st, they were.
Q Not the 1st, I am talking about the 8th?
A The 8th of October?

Q Yes?
A No, no.
Q Your engineers did not work on the 7th, is that correct?
A That is right.
Q Now, my question to you is on that date, October the 8th, on a Friday were all of your building trades, craftsmen working for you on that date paid their wages?
A They reported to work and we gave them two hours show up time on that particular day. I am not sure of this, they reported to work.
Q You sent them home?
A If that was the day thay received their show up time on that particular day.
Q And they were sent home were they not?
A I believe so on that particular day.
Q All right, my question is this: When these men left the job the day you had to send them home did you give them any final instructions as to when you would want them to return?
[fol. 72] A I told them to report the following, the first stoppage was on the 1st, and they worked three hours that day and they returned back monday and we worked until the 7th. The 7th they worked I believe a full day and the next day we worked, if I remember correctly, two hours, that was Friday, and then the Monday they reported to work and I believe we paid them show up time. We had no more cleaning up to do at that particular time. They were not laid off.
Q But they were paid two hours show up time, and in any event when they were returning you couldn't utilize these people?
A That is right.
Q Because of the stoppage?
A That's right.
MR. SUBRIN: No questions.
MR. APRUZZESE: No questions. Thank you.
TRIAL EXAMINER: You may be excused.

(The witness withdrew.)

Thereupon,

TELGHMAN SUFFECCAL

was called as a witness for and on behalf of the General Counsel, and first having been duly sworn by the Trial Examiner was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Subrin:) State your name and address, please.

A Telghman Suffeccal.

[fol. 73] Q Mr. Suffeccal did you get a subpoena to this hearing?

A Yes, sir.

Q Where are you employed?

A Oyster Creek project, nuclear power station.

Q What is your position there?

A General superintendent.

Q For whom?

A For Poirier and McLane Corporation

Q What is Poirier and McLane doing on that job?

A They are building the turbine structure, intake structure and discharge structure.

Q What trades or crafts are employed by Poirier and McLane?

A The operating engineers, carpenters, laborers and iron workers. And also subs which consist of electricians and pumps.

Q Who represents your operating engineers?

A Hank Behren as shop stewart.

Q What labor organization?

A 825.

Q Is that Hank Behren your show stewart?

A He has been my shop stewart since roughly the middle of May?

Q How do you spell Beherend?

A Beherend. B e h e r e n d.

Q How many operating engineers employees did you [fol. 74] have on the job on October the 6th?

A As of that date, 20.

Q Now, what kind of work does Beherend do for you?

A Well, he orders men in when we need them. He checks their equipment and he has many other activities.

Q How do you mean he orders men in?

A In other words when I need men I notify him the day before and he calls the Hall and produces the engineers.

Q Did you have any conversation with Beherend on the evening of October the 6th?

A At October the 6th he came and told me that we may or may not have engineers the following day.

Q Did any engineers report on the following day?

A No engineers reported to work as of the 7th.

Q You would have had twenty on the 6th?

A I would have had twenty on the 6th.

Q How many employees did you have on the 6th?

A About 250.

Q Now, after the 6th, then, after the evening of the 6th did you have any further conversation with Beherend?

A Nothing, only I asked when we would get the engineers back.

Q When did they return to work?

A They returned, Beherend told me the 11th at four o'clock in the afternoon that we may have engineers back the 12th.

[fol. 75] Q Did you in any way discuss with Beherend as to whether Poirier McLane had a dispute with Local 825?

A I asked Beherend and he said he has a dispute with Burns and Roe and White Construction, but he has no dispute or no difference with Poirier and McLane.

Q Did he tell you why the men were not working?

A I got no answer.

Q When did your operating engineer employees return to work then?

A They returned to work at eight o'clock on the 12th, a Tuesday, November the 12th.

Q Have they remained at work since that time?

A That's right. I have had no shut down of engineers since then.

Q All right, between the 7th and the 12th you stated that you had about 200 employees on the payroll on the

6th. What did you do about those employees?

A I worked the carpenters. I have 140, 145 carpenters. I worked the carpenters as far as I could go, and I worked the office force all night long to make up the payroll for 200 men, and notified them at ten o'clock they were getting paid to eleven.

Q Ten o'clock on what date?

A Well, different dates. I worked each trade as far as I could work them. They were different men.

Q By the 12th, by the 11th, how many employees [fol. 76] were left on the job?

A In fact two days after the strike or whatever you call it, by the walkout—

TRIAL EXAMINER: Work stoppage I guess is as good as anything.

A All right, we worked as far as we could go which was two days and then I had no carpenter work and I have no cranes and then I made the pay off, then I was stuck with the straight time men which I have 17 and we cut down and paid off accordingly.

MR. SUBRIN: No further questions.

Thereupon,

CROSS EXAMINATION

Q (By Mr. Apruzzese:) You say when you paid off were these men actually laid off?

A No. We are forced according to agreements to pay a two hour show up time on certain trades, therefore when we were still laying the men off we would tell them to come back the next day and we would guarantee them their two hours, so, on the day there was supposed to be laid off we notified them that we couldn't get into the bank until nine o'clock and we worked all night on the payroll and paid them up to eleven o'clock. So that gave them an additional hour plus the show up time.

Q And after that time they were no longer on your payroll. Is that correct?

A In other words they were paid off until the engi- [fol. 77] neers showed up which was on the 11th.

Q In other words they were laid off and they were not to resume work until you called them back and you didn't want to call them back until you had engineers?

A Correct.

MR. APRUZZESE: Thank you that is all.

TRIAL EXAMINER: Thank you. You may be excused.

(The witness withdrew.)

Thereupon,

ROBERT C. KYLLBERG

was called as a witness for and on behalf of the General Counsel and, first having been duly sworn by the Trial Examiner, was examined and testified as follows:

DIRECT EXAMINATION

Q (By the General Counsel:) State your name and address for the Reporter, please.

A Robert C. Kyllberg, 20 Pineway, New Providence, New Jersey.

Q Will you state your position, Mr. Kyllberg?

A General superintendent for White Construction Company.

Q Are you familiar with the construction now going on at Oyster Creek?

A Yes, sir.

Q Do you know Peter Weber?

A Yes, he is Business Agent for Local 825 Operating Engineers.

[fol. 78] Q Have you ever talked to Weber at the Oyster Creek job?

A Yes, sir.

Q When was this?

A On October the 26th.

Q 1965?

A 1965.

Q Why was it that you had this meeting with Weber on this date?

A At the inception of this job it was necessary to weld certain structural steel. We had proposed to use an elec-

tric welding machine, electrically driven welding machines which we did. We had assigned the operation of the electric welding machines to the iron workers. This had been protested by the operating engineers and we had taken this to the Joint Board in Washington and we had a decision from the Joint Board which upheld our award to the iron workers, and we intended to proceed on this basis.

I received word in New York that the operating engineers were upset over this decision, and—

Q (By the Trial Examiner:) Who did you receive this word from?

A My superintendent, Mr. Gunderson. So, we arranged a meeting between Mr. Weber and myself to see if we could iron out difficulties.

Q (By Mr. Hannon:) This meeting took place on [fol. 79] October the 26th at the job site?

A Yes, sir.

Q Who was with Mr. Weber at this time? Can you identify any of the people?

A Well, when Mr. Weber came in he felt the operating engineer employees, he talked with them and when he and I discussed things we essentially discussed them alone.

Q Can you identify any of the people to whom you spoke?

A Oh, many of them. This Hank Beherend that was in evidence. Bonatz is in evidence. I went to lunch with a man by the name of Getti and Peter Weber. There was so many.

Q Let me get back to the conversation. What actually was the conversation you had with Weber on the job?

A He arrived on the site at about eleven o'clock and he walked over to the actual construction operation, itself, where we were going to perform our work and I explained to him what our work was and what we intended to do and pointed to the welding machine and explained our general method of operation.

About that time it was lunch and he suggested we go to lunch and which we did, and when we came back he

briefly spoke with his people, this man on the job, then he and I again walked over to the building site. Then he told me that the Joint Board Decision was all wrong that this operation of the welding machine meant a great deal to him. He would not give it up. He had 600 mens job at stake or some such figure. He told me that if [fol. 80] we work with him it would be very advantageous for us, and he would help us a great deal, if on the other hand if we did not there were all sorts of complications that could ensue.

We had a crane working just a few feet away. He pointed to the crane and says, how would you like to put three operators on that crane? The normal complement is two. He said, "How would you like to have a thirty hour work week with those men and triple time for overtime, the normal work week is forty hours."

And he told me that Burns and Roe were very bad people to work with and I told him he had a decision by the Joint Board about this welding machine. I asked him if he was so upset over the loss of one man, one mans time on this welding machine. I said, we are going to bring a portable concrete pump on the job in the near future, but the portable concrete pump would be used very intermitently, we would use it a day and then we would shut it off for three or four days and then use it again, and back and forth like this, if it made that much difference we could put an operating engineer steady on the concrete pump instead of intermitent.

He said he was not at all interested in the concrete pump, he wanted the decision on that electric welding machine altered.

I told him this we couldn't do. We were members of the Contractors Association in New Jersey and we sub- [fol. 81] scribed to following the procedures of the Joint Board. We were also contractually bound in our contract work between ourselves and Burns and Roe, and that labor disputes would be handled through the Joint Board and the other appropriate established mechinisms for handling job disputes.

They, again, ran through the bit about if we worked with them and if we didn't work with them and then I

asked him to leave that welding machine decision alone. We just had to follow it. I told him that the President of our company and principal owner was on a business trip. At that time he would be back in a matter of less than two weeks. The work schedule was such that we could continue erecting constructural steel and not use the welding machine and we could temporarily not use the welding machine and not perform a welding operation and wait until the President of the Firm came back and we would discuss it again with him. He suggested that we substitute a gasoline driven welding machine for the electrical welding machine. And I told him this would be a subterfuge and evading the spirit of the Joing Board's Decision and we couldn't do that.

So, the meeting was more or less terminated on the note that we would temporarily withhold welding until the President came back.

MR. HANNON: May I have marked for identification this document as General Counsel's Exhibit No. 12.

[fol. 82] (Thereupon, the document above-referred to was marked as General Counsel's Exhibit No. 12, for identification.

Q (By Mr. Hannon:) Mr. Kyllberg, you stated in your conversation and you brought up the subject of a concrete pump.

Will you identify that picture.

A Yes. This is a Whitman portable concrete pump that we intended to use to pump concrete into the structure.

Q Is that the concrete pump that was brought out to the job?

A Yes.

Q What was it Mr. Weber said about this pump the assignment of work to this pump?

A He siad he was not interested.

MR. HANNON: I offer into evidence General Counsel's Exhibit No. 12.

TRIAL EXAMINER: This is the pump that was going to be used intermitently?

A Correct.

MR. APRUZZESE: No objection.
TRIAL EXAMINER: It will be received.

(Thereupon, the document above-referred to, heretofore marked as General Counsel's Exhibit No. 12, for identification, was Received in evidence as General Counsel's Exhibit No. 12.)

[fol. 83] MR. HANNON: No further questions.
MR. APRUZZESE: No questions.
Yes, I have one question.
Q (By Mr. Apruzzese:) Mr. Kyllberg you said something about the White Construction is a Member of the Building Association of New Jersey?
A Yes, it has been a member all during this period and prior to this for some years.
MR. APRUZZESE: Thank you. No further questions.
TRIAL EXAMINER: You may be excused. Thank you.

(The witness withdrew.)

Thereupon,

ROBERT A. ESCHER

was called as a witness for and on behalf of the General Counsel, and first having been duly sworn by the Trial Examiner, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Hannon:) State your name and address for the Reporter.
A Robert A Escher, 17 Ducker Pond Road, Demerest, New Jersey.
Q Will you state your position, Mr. Asher?
A I am president of the White Construction Company.
Q Does White belong to any Association in New Jersey for collective bargaining purposes?
[fol. 84] A Yes, we belong to the Building Contractors Association of New Jersey and which we have be-

longed to for many, many years, and I am presently a Trustee of the Association.

Q Does that Association presently have a contract with Local 825, Operating Engineers?

A No.

MR. HANNON: Mr. Trial Examiner, I would ask you to take official notice of National Labor Relations Board case citation Local 825 Operating Engineers and the Building Contractors Association of New Jersey at 145 NLRB 952, and in that decision the Board found that Local 825 had violated the National Labor Relations Act because it refused to bargain collectively with the Building Contractors Association of New Jersey and it restrained and coerced members of that association in its selection of the Association of its representative for collective bargaining purposes.

MR. SUBRIN: I think that case is before the enforcement branch now.

MR. HANNON: And I think as I understand it that the case has been on remand for or a certain portion of the case not pertaining to the AP Section.

TRIAL EXAMINER: What is the point in that case that would be emphasized here or be pertinent here.

MR. HANNON: I think it should be emphasized on this point of view, Mr. Trial Examiner, there has been [fol. 85] testimony that Local 825 represents the employees on White's job and we have at the same time testimony that Local 825 agents have gone to White and asked for a contract. So, there seems to be some complications as to just what the relationship is between White and Local 825.

TRIAL EXAMINER: Whether they have an individual contract or whether they have a contract through the White's membership through the association?

MR. APRUZZESE: If your Honor is going to take judicial notice of the case I obviously assume you are going to read it it as well. The only other point that I think is worth mentioning at this juncture and in addition to the matters that Mr. Hannon mentioned namely, the Union did not bargain in good faith, they have been found to not have bargained in good faith and they en-

deavered to negotiate individually rather than to sever the individuals from the Association. There was also a finding by the Board in that case as to the Unit that was appropriate for the purposes of collective bargaining and the unit that was appropriate for the purposes of collective bargaining list specific items of equipment over which the engineers were the appropriate bargaining agent and likewise a list of equipment over which they were not properly under the Board's finding authorized to bargain for. So, it is quite significant with regard to these subjects, your Honor.

TRIAL EXAMINER: Aside from which I have the [fol. 86] Joint Board's settlement of disputes.

Q (By Mr.. Hannon:) I understand there has been no contract with Local 825 since the 1962. Is that correct?

A That is correct.

Q There has been considerable discussion about contract between Burns and Roe and White as to what White is doing on this particular job site.

Now, are you familiar with the contract that is in existence between Burns and Roe and White?

A Yes.

Q Now, Mr. Escher, what do the contents of that contract say in regard to the subcontractors obligations to the National Joint Board?

A Well, we are to abide by the rules and procedures of the Joint Board in settling jurisdictional disputes.

MR. HANNON: Your Honor, this is a rather lengthy document to put into evidence. I would like to have it identified and put in abstracts from it.

TRIAL EXAMINER: If there is no opposition there will be none from me.

MR. HANNON: Will the Reporter mark this as General Counsel's Exhibit No. 13, for identification.

(Thereupon, the document above-referred to was marked as General Counsel's Exhibit No. 13, for identification.)

Q (By Mr. hannon:) Mr. Escher, can you point to [fol. 87] that portion of the contract—first, let me ask

you to identify that which has been marked as General Counsel's Exhibit No. 13?

A Yes, that is our contract with Burns and Roe with my signature on the contract.

Q When is the contract dated?

A The agreement was made and entered into on the 26th day of August 1965.

Q All right, can you identify that portion of the contract that pertains to the obligation of the subcontractor in the jurisdictional disputes?

A Yes.

Q Where is that?

A That is on page 19 of General Requirements, paragraph 31. It is titled "Labor Relations".

Q And what is your understanding of that?

A My understanding is that we will in the settlement of any jurisdictional dispute be bound by the Rules and Procedures of the National Joint Board.

MR. HANNON: Mr. Trial Examiner, I will request permission, again, to introduce only that portion.

TRIAL EXAMINER: Are you going to read it into the record?

MR. HANNON: I think that would be the easiest. This is under Article 31, "Labor Relations. The subcontractor shall be responsible or its own labor relations with any trade or Union representing his employees and he [fol. 88] shall negotiate and seek to adjust all disputes between himself and his employees or anyone representing such employees. The same responsibility shall extend to the Lower Tier subcontractors. All contractors in lower Tier subcontractors shall in the settlement of any jurisdictional dispute be bound by the Rules and Procedures of the National Joint Board where the settlement of jurisdictional disputes and shall make assignments in accordance with such Rules and Procedures."

That is the portion that I would have read into the record and that is the portion of the contract I would have considered into evidence.

TRIAL EXAMINER: There being no objection that portion of the contract has been received as exhibit marked for evidence.

Q (By Mr. Hannon:) Mr. Escher, has White in the past submitted other disputes to the National Joint Board?

A Yes.

Q How recently?

A In May or June of 1965.

Q Now, as far as this particular dispute is concerned over the electrical welding machine that was submitted to the National Joint Board on October the 6th, 1965, did White carry out the assignment that was made in the ward on October the 19th?

A Yes.

Q Does White consider itself bound by the award that was made by the National Joint Board?

[fol. 89] A Very definitely.

Q Now, as I understand it the other craft involved in that electric welding machine assignment was the Iron Workers.

Is that correct, Local 350?

A Yes.

Q Now, just what contractual relationship, if any, does White have with the Iron Workers?

A We have no direct contractual relationship with them because we are a member of the Building Contractors Association of New Jersey. They are our bargaining agents and we are bound by the contract they have with the Association.

MR. HANNON: I will have this document marked as General Counsel's Exhibit No. 14, for identification.

(Thereupon, the document above-referred to was marked as General Counsel's Exhibit No. 14, for identification.)

Q (By Mr. Hannon:) Mr. Escher, will you identify that document that has been marked as General Counsel's Exhibit No. 14, for identification.

A Yes.

Q What is it?

A This is a contract that we are working under with the Iron Workers.

MR. HANNON: I am going to offer into evidence General Counsel's Exhibit No. 14.

TRIAL EXAMINER: It is received.

[fol. 90] (Thereupon, the document above-referred to was heretofore marked as General Counsel's Exhibit No. 14, for identification, and was received in evidence as General Counsel's Exhibit No. 14.)

Q (By Mr. Hannon:) Do you know Peter Webber?

A Yes.

Q Who is he?

A He is manager of Local 825, International Operating Engineers?

Q How long have you known him?

A For seven or eight years.

Q Can you identify his voice?

A Yes.

Q When was the last time you talked to him?

A I talked to Mr. Webber on the 1st day of December over the telephone.

Q 1965?

A A yes.

Q Did you recognize his voice at that time?

A Yes.

Q Why did you call Mr. Weber?

A Since the 17th of November our job has been stopped down, shut down and we had been trying to contact him daily with telegrams and telephone calls and just couldn't get him, finally on the 1st of December at about five thirty in the evening we were having a meeting in my office and discussing where we were going to go and how we were going to get this job done. I decided [fol. 91] to call Pete at home and he had given me his home phone number three or four years ago. So, I called him and he answered the telephone. We talked for about an hour and twenty minutes or a hour and a half about the whole situation, basically the conversation was what we was going to do to get the men back to work. I said I had heard from the job that day that if we took the electric equipment off the job and put gasoline equipment on that we could go back to work.

I asked if this was true and he said "Yes, but you have got to sign a contract."

I told him that I couldn't sign a contract and this has been an amounting contention with Mr. Weber and myself for the last five or six years and since 1962 when the contract expired, because every time I met with him on any problem he wanted me to sign a contract which we have refused to do.

Q Did he say at this time what kind of a contract he wanted you to sign?

A Yes, he wanted me to sign the same kind of contract which Poirier McLand and Chicago Bridge and Iron, an agency group in New Jersey had signed, and of course from a general contractors stand point it is just impossible. We just can't work under that contract.

Q Is this what you told Weber?

A Yes.

Q What other conversation did you have with Weber? [fol. 92] A I had been talking to him for a hour and a half and we covered all the ground from A to Z, but the other, one of the other points was, I said, "Pete if you are going to strike our job now why could you give me men back in September and October. I didn't have the contract then and I don't have one now. So, what is the difference?"

And he said, "Well, you double crossed me and we met in Newark which we had done in September prior to starting on the job, where again he tried to force a contract on me.

He claims that I agreed to abide by this contract because the conversation then, I definitely told him we would not abide by it, but we would work on this job exactly as we had worked in New Jersey and we were presently working in New Jersey on three other projects.

I asked him also, "Well, Pete why wont you give me engineers at Oyster Creek when you are giving me engineers on the National Biscuit Company and the Telephone Company and on the school job."

He siad, well I will picket up there tomorrow. I will pull the men off tomorrow. I am not going to have anybody working for you without a contract." Of course he

did not picket the job. He did not pull the men off the next day on those jobs and they have continued as a matter of fact they are nearing completion, so—

Q Did you discuss teh National Joing Board award? [fol. 93] A I also brought up very strongly about the National Joint Board award and he told me with a great deal of profanity that they didn't know what the hell they were talking about, that this was his work and had been his work historically and that they were just a bunch of dopes and he wasn't going to abide by it and that it meant four hundred new jobs to him in the State of New Jersey.

Q About what work was he talking about?

A About the engineers standing by on the welding equipment. He also went into the fact it is also a very dangerous piece of equipment and you had to have a qualified man standing by to push the button and stop it if something went wrong.

I asked him, I said, well, Pete, isn't any other trade qualified to put this button and stop it.

He said, "Absolutely not."

So, I said, he said, "I have it all over the State."

I pointed out that on two of our jobs right in New Jersey in his jurisdiction the mechanical contractors were operating electrical welding equipment with no engineers. Again, he said, "If that is the case I will picket that job tomorrow. I will stop it." Of course he didn't do that either.

Q Did you in any way discuss the iron workders?

A Very definitely we discussed the Iron Workers. I said the iron workers had agreed to do this and had been doing it.

Q By doint this?

A Starting and stopping the welding equipment and [fol. 94] he said the iron workers didn't want it, they didn't want this assignment.

I said, "Of course they their International President sent them a telegram and ordered them to abide by this decision, and I said, "Also, Pete, Mr. Wharton who is the International President of the Engineers ordered you to go back to work." And he said, "He did like hell and I don't have to."

I said, "What are you going to do about the National Labor Relations Board injunction we have."

He said they ordered me to go back to work for Poirier McLane and Chicago Bridge and not for you.

I said, "Well, that is not my understanding. As I understood it you are supposed to go back to work for us and abide by these decisions, and also any work assignments that we make, and if you don't like it then take it to the Joint Board."

As I said, this was a hour and a half conversation.

Q Did he discuss future work on the job?

A Very definitely. He said again as Mr. Kyllberg pointed out, that they didn't know what they were doing, that they were leading us down a garden path or a prim rose path, and that we shouldn't pay any attention to them.

I said we are not paying any attention to Burns and Roe, that is the way we operate all the time. I said, "naturally we are consulting with them, but this is our decision to go along with the Joint Board Decisions which [fol. 95] we have to do", and he said—I have lost my trend of thought.

Q You are talking about Burns and Roe?

A Yes, Burns and Roe and myself. He said that since I hadn't cleared with him and checked with him when we came on the job that I could look for plenty of trouble in the future, and he said as far as Burns and Roe is concerned when they build that office building of theirs in Ordell in northern New Jersey they will have plenty of trouble. He also talked about a thirty hour week and triple time for over time and four men on the crane and all of this—just harassment.

Q What did he say specifically about assignments on the White's Oyster Creek job, future assignments.

A On future assignments we had to work in accordance with the contract that the AGC group had, actually there was going to be no deviation from that contract and I told him that we could not abide by it economically or anything else and that we were going to work strictly in accordance with the rules Joint Board Procedures and the Association.

Q Did he discuss what his AGC contract covered?

A His AGC contract, he said covered all power equipment regardless of the source of the power including electric welding machines and whether they were gas or electrically driven or how they were driven.

Q Now, you have mentioned that you have been a Trustee of the Building Contractors Association of New [fol. 96] Jersey. Have you had any meetings with the Association as a Trustee?

A Yes, on the 19th of November we had our last Trustees meeting in Princeton at which time there were thirteen or fourteen of the Trustees present and I apprized them of this situation and asked them if they knew of anybody else in the Association or that if anybody else in the Association was having any problems with 825, and also the managing director, Mr. Brehenza who is in contact daily with many more members of the Association and nobody knew of any problem at that period or at that time.

Q I want to go back to the conversation with Weber that you had on December the 1st.

During that conversation did you have any discussion on the jurisdiction of the signaling on the job?

A Yes. In his conversation when he told me we were going to have plenty of trouble from there on. He said, I am going to have one of my men do all the signaling and I am going to have my men erecting and dismantling the cranes, of course which is not the area practice and not the practice anywheres in the country. I know usually all this work is done by the iron workers or the men who are using the signaling or the trade that is using the crane, but he threatend this and this is what we would have to do in the future, put engineers on this work. It has been clearly traditional the iron workers.

MR. HANNON: No further questions.

MR. SUBRIN: May we go off the record please?

* * * *

[fol. 104] AFTER RECESS

(Whereupon, at 1:00 o'clock p.m., the hearing was resumed, pursuant to the taking of the recess, at 11:50 o'clock a.m.)

TRIAL EXAMINER FUNKE: The hearing will be in order. At this time I believe there is an appearance on behalf of the respondent Local 825.

MR. ARONSON: That's correct, sir. Thomas E. Durkin, 24 Brandford Place, Newark, New Jersey, Earl S. Aronson appearing.

TRIAL EXAMINER: Now I believe at this time the General Counsel has some further exhibits to offer.

MR. HANNON: Yes, your Honor. I would put in evidence General Counsel's 1-A—excuse me—that will be 1-O—if you'll hold it just one second I'll have the reporter mark them.

(Thereupon, the documents referred to were marked General Counsel's Exhibits Nos. 1-O thru 1-U, for identification.)

MR. HANNON: I'll offer in evidence then General Counsel's 1-O through 1-U; and I'll show these to the parties.

MR. ARONSON: No objection.

TRIAL EXAMINER: They are received.

(The documents heretofore marked General Counsel's Exhibits Nos. 1-O through 1-U, for identification, were received in evidence.)

* * * *

[fol. 124]

TILGHMAN G. SUFFECOOL

a witness recalled to the stand, being first duly sworn, was examined and testified further as follows:

CROSS-EXAMINATION

Q (By Mr. Aronson) Mr. Suffecool, state your full name, please.

TRIAL EXAMINER: Oh, yes—state your name and address to the reporter; I'm sorry.

THE WITNESS: Tilghman G. Suffecool.

Q (By Mr. Aronson) Your address, sir?

A 195 Jolly Rogers Way, Skippers' Cove, New Jersey.

Q Mr. Suffecool, by whom are you now employed?
A Poirier & McLane.
Q And in what capacity, sir?
A Pardon?
Q What's your capacity with them?
A General Superintendent.
Q And that would be at the Forked River job site?
A Forked River Nuclear Powerhouse.
TRIAL EXAMINER: It's also known as the Oyster Creek Project?
THE WITNESS: That's right.

* * * *

[fol. 134] TRIAL EXAMINER: Well I'll limit it to the aspects of this case, to which it may be relevant.
Q (By Mr. Aronson) All right, now Mr. Suffecool, have you ever heard Henry Behrend make a telephone call to the union hall to get a man when you want one?
A Not for men because I didn't—
Q Have you ever heard him—yes or no?
A No—offhand, I would say "no."
Q Now the shop steward of Local 825 on this job site was Bill Bonatz, isn't that correct
A At that time, yes.
Q Now did Mr. Bonatz or any other official of Local 825 or any employee of Local—of yours, who was a member of Local 825, at anytime, threaten you or ask you to stop doing business with Burns & Roe or White Construction Company?
[fol. 135] MR. HANNON: Objection. I don't—
THE WITNESS: No.
MR. HANNON: Objection to the word "threaten." I mean, if he wants to refer to something more specific than that, all right; but I think the word "threaten"—
TRIAL EXAMINER: No, I think the word "threaten" has a common connotation. I'll accept it. The objection is overruled.
Q (By Mr. Aronson) Your answer, sir?
A No, I wasn't threatened by nobody because I—
Q You weren't threatened, is that correct?
A I was not threatened.

Q Now, on or about October 6th, 1965, you had a conversation with Mr. Behrend, is that correct?

A That's right.

Q Now your operating engineers were working on that day, isn't that correct? Were they working on that day?

A As of the date of the 5th or 6th, or what date, are you referring to?

Q October 6th.

A October 6th.

Q Were they working, sir? They were, isn't that so?

A They were working.

Q All right. Now Mr. Behrend told you on that date that he had heard a rumor that the operating engineers [fol. 136] at the site had taken a vote and were not going to work on the following day, isn't that true?

A That is true.

Q Now at no time did Mr. Behrend tell you that he told the operating engineers not to report the next day, isn't that so?

A He didn't tell me that he told them.

Q All he told you was that the operating engineers had taken a vote among themselves, isn't that so?

A And "we may or may not have"—that's the words that were spoken.

Q And he also said to you, sir, did he not, that the reason he was telling you this was because he didn't want you to have any problems the following day, should you want to order concrete or some other material at the site, isn't that so?

A That is true.

Q Now what else was said in that conversation on October 6th between you and Mr. Behrend?

A October 6th—well we got our men back the 7th.

Q What else was said in the conversation, if you remember?

A At that date, he said that "you may or you may not have men tomorrow."

Q Now what else did he say, if anything?

TRIAL EXAMINER: Did you ask him why the men had voted?

[fol. 137] THE WITNESS: No, I didn't ask him. I asked him why we wouldn't get men and I got no answer. And he said, "You may or may not have men tomorrow."

TRIAL EXAMINER: There was mention of a vote taken by the men, is that correct, or am I misunderstanding you?

THE WITNESS: To my recollection there was a vote taken of the men; but then he said, "We may or may not have men." Now that's the words I remember.

Q (By Mr. Aronson) Now at no time did Mr. Behrend ever say to you that "We have a dispute with Burns & Roe and White," did he, sir?

A Well I understood some words like that but if I made a statement that we had no dispute with the engineers before, since that time I found out that we have had a dispute with all trades.

Q Let me repeat the question, Mr. Suffecool. During your conversation with Mr. Behrend, he at no time said to you that Local 825 had a dispute with Burns & Roe and White and not with you, isn't that so?

A Well, I—

Q Is it so—yes or no—sir?

A On that day, it's hard for me to remember back that far.

Q Maybe I can refresh your memory.

TRIAL EXAMINER: Now he's going back to October 6th.

[fol. 138] THE WITNESS: The main thing was that he said that we may or may not have engineers.

Q (By Mr. Aronson) Did he say that 825 has no dispute with you, but only had—but only has a dispute with Burns & Roe and White—he didn't say—isn't that so?

TRIAL EXAMINER: Did the witness ever say he said it?

MR. HANNON: Yes, sir, the witness did say so.

MR. APRUZZESE: Page 75.

THE WITNESS: Well that should be stricken if it's said because since then I found out that we had a dispute with all trades.

MR. HANNON: Your Honor, I move to strike that testimony. There was no question outstanding of that nature to this witness.

TRIAL EXAMINER: Yes, but the fact that the answer may not be responsive is an objection that goes to the counsel interrogating the witness.

Q (By Mr. Aronson) All right, so that it's your testimony, sir, that that wasn't said, right?

A At that time, I couldn't say, because it's been that far back that I couldn't say it was so.

Q Well, sir, what if I told you that the first day of this hearing you testified that that was so—now what would you say?

A Well—

MR. APRUZZESE: If your Honor please, I would ask that the witness be shown the portion of the testimony that he's speaking of—because I think that Mr. [fol. 139] Aronson has asked this question in a rather ambiguous fashion, if you will.

TRIAL EXAMINER: The testimony is a little ambiguous, too. It always is in these prceedings.

MR. APRUZZESE: Well I would still submit, your Honor, that—

TRIAL EXAMINER: It's up to Mr. Aronson.

MR. ARONSON: The witness seems to understand my question, sir. I don't want to rephrase it because I feel that he understands it. And I have no desire to show him any of his testimony.

TRIAL EXAMINER: Now who is—you are with Poirier & McLane?

THE WITNESS: That is right.

TRIAL EXAMINER: If I understand his testimony, in answer to the question, he stated that he had had—that Poirier & McLane had no dispute with Local 825; but that he later found out that in the past Local 825 had had disputes. There is nothing as I can understand it, to do with this case.

MR. APRUZZESE: Right.

TRIAL EXAMINER: That he was in error there.

Q (By Mr. Aronson) Now in addition to your being in error as to the fact, sir, did Mr. Behrend say to you

that Local 825 had a dispute with Burns & Roe and White but not with Poirier & McLane?

A At that date?

[fol. 140] Q Yes, sir.

A I don't think he did.

Q Did he ever say it to you on any other date?

A Well—

Q That is, that you can remember?

A Well in the month of October, it would be hard for me to remember the exact words.

Q Now, then, if I told you, sir, that at the prior hearing, you testified that Mr. Behrend said to you that Local 825 had no dispute with Poirier & McLane but did have a dispute with Burns & Roe and White; if I told you that you testified that way would you now say that you would want to change your testimony?

A I would like to strike that from the records, because we did have disputes. Since then, we've had a dispute with all trades, sir.

Q And would you want to strike it—would yau want to strike—

TRIAL EXAMINER: This doesn't go to that statement—

Q (By Mr. Aronson) Would you want to strike it from the record, sir, that it was ever said to you?

A Well it's been said many times by many people, but I couldn't say exactly who would repeat it if I was on oath.

Q Sir, you testified under oath that Mr. Behrend said it to you. Were you incorrect then—and do you want to change that?

[fol. 141] A If it was a direct question, I would change it.

MR. ARONSON: All right.

TRIAL EXAMINER: Well we are referring now to your conversation—and your conversation, apparently, only referred to this job site—and your answer to a question was: "I asked Behrend and he said he has a dispute with Burns & Roe and White Construction, but he has no dispute or no difference with Poirier and McLane." At that time, on that job, is that what he said

to you or didn't he? You just said he didn't, if I understand you. But I'm not sure I understand you. If you can't remember now what Behrend said to you then, we can't do anything about it.

MR. ARONSON: I think the witness' testimony prior to your question, sir, answered that.

TRIAL EXAMINER: No, I don't think it did. I think he's now going back to the fact that he was in error—

THE WITNESS: I erred because we have had disputes.

Q (By Mr. Aronson) All right, now, in addition to your having had a dispute with Local 825—of which you were in error—were you also in error, sir, on the first day of this hearing, when you testified that Mr. Behrend told you that Local 825 had no dispute with your company but had one with Burns & Roe and White?

MR. HANNON: Your Honor, again, I would like to have the witness see the testimony and—

[fol. 142] TRIAL EXAMINER: I'll show it to him. Here's your testimony.

MR. ARONSON: It was read to him, Mr. Hannon and—

TRIAL EXAMINER: Well maybe he can get it better reading it. I want to make sure that the witness understands. He keeps repeating that he was in error in saying that there had been no labor disputes with Local 825. He never said there were labor disputes with 825 in his testimony.

MR. ARONSON: I'm aware of that, sir.

TRIAL EXAMINER: This is only going to lead to a completely garbled record. Remember you're only saying what Behrend told you. Do you remember Behrend telling you that?

THE WITNESS: Well it was said in a group and I thought it was Behrend because we were holding a conversation. That's exactly what happened.

Q (By Mr. Aronson) Who else was there during this conversation?

A At that date, I don't remember because there was a work stoppage coming or we may or may not have engineers and I just forget just what was said there.

Q Well how do you remember that Mr. Behrend was there if you don't remember who else was there?

A That's right. (sic)

Q You don't remember if it was Mr. Behrend or somebody else who said it—is that what your testimony is?

[fol. 143] A Well I know it was said but going back and striking (sic) it from the record, I would say I don't know today right now what the score was on that—

* * * *

[fol. 146] CHRIS GUNDERSON

a witness recalled to the stand, being first duly sworn, was examined and testified further as follows:

* * * *

[fol. 147] Q (By Mr. Aronson) Mr. Gunderson, when was the first work stoppage of White's employees?

A Well, I don't recollect now. It is back in October sometime.

Q You are sure it was October?

A It's way back. I can't remember now.

Q Pardon?

A I can't just recollect when the date was.

Q Let's see if we can refresh your recollection. Do you remember a day when there was a work stoppage for three or four hours and then after three or four hours the employees returned to work? Do you remember that?

TRIAL EXAMINER: He didn't ask you to remember "the" day; only if you remember "a" day when that happened. Did that ever happen?

Q (By Mr. Aronson) Did that happen, Mr. Gunderson?

A I can't remember now.

Q You don't remember?

A No.

Q Would it refresh your recollection, sir, to tell you that on October 1 there was a work stoppage for a period of three or four hours?

A October 1?
Q Yes, sir.

• • • •

[fol. 149] • • • that date? Do you remember the day the welding machine came on the job?
A Yes.
Q All right. Do you remember whether anyone asked you or said to you that this was Operating Engineers' work?
A Yes.
Q Who?
A Hank Behrend and—yes, I believe it was Hank Behrend.
Q You believe it, but you are not sure?
A I'm sure.
Q Was anybody else with him?
A Bill Bonatz.
Q Right. Now on September 27 you made a written assignment of the electric welding machine to the Ironworkers, isn't that correct?
A I got orders from my office, from my general superintendent Mr. Kylberg, to make a written assignment on the electric welding machine.
TRIAL EXAMINER: That was the assignment of this work to the Ironworkers of this welding machine?
THE WITNESS: Yes, sir.
Q (By Mr. Aronson) Did you have ironworkers working for you at that time?
A Yes.
Q And do you remember the names of these iron-
[fol. 150] workers that you had working for you?
A Well, the foreman was Smith.
Q That would be Edmund Smith?
A Yes.
Q And who else?
A The rest I got to look on the payroll. I wouldn't know their last names.
Q Now isn't it a fact, Mr. Gunderson, that before you made this written assignment to the ironworkers—strike that.
Had you ever worked on welding machines—a welding machine similar to this one before at a jobsite?

A Not electric. Gas welding machine.
Q Always gas?
A Yes.
Q So you had never worked on an electric one before?
A No.
Q All right. Now let's say prior to September 27, what were the ironworkers doing at the job site?
A I believe they were unloading steel, structural steel.
Q Now when you made the assignment on September 27, 1965, when did you intend to start the welding machine?
A When the welding of structural steel would start.
Q And when would that start in relation to the date you made the assignment? Or maybe you don't know?
A I wouldn't know.
[fol. 151] Q You wouldn't know?
A No, not off-hand, no.
Q Did you ask your superior whether you should make an assignment or did he call you up and tell you?
A He told me.
Q Your superior is Mr. Coleman?
A Mr. Kylberg.
Q Kylberg?
A Yes.
Q He is the fellow who isn't here today? He no longer works for White?
A That's true.
Q Now isn't it a fact, Mr. Gunderson, that no one from the Ironworkers, either an employee or Mr. Smith, who is the president of the Ironworkers, or Mr. Norton, who is another representative of the Ironworkers, at any time ever asked you for that work on the welding machine when you made that assignment on the 27th?
A Correct.
Q Correct. And to your knowledge nobody from the Ironworkers had ever made a demand on anybody from White about this work, isn't that correct?
MR. APRUZZESE: Would you establish the period of time.

MR. ARONSON: I am talking prior to the date the assignment was made.

[fol. 152] TRIAL EXAMINER: Prior to that date had anybody from the Ironworkers ever requested the welding machine operation?

MR. ARONSON: To your knowledge?

THE WITNESS: No.

Q (By Mr. Aronson) As a matter of fact when Mr. Kylberg told you to assign this work to the Ironworkers it came as a complete surprise to you, isn't that so? Is that so?

MR. HANNON: Objection. I don't see the relevancy of the question.

THE WITNESS: Well, yes—

TRIAL EXAMINER: Well, I don't know the relevancy now. I don't know where this testimony is leading. I can't always rule on relevancy until I determine later what is relevant and what is not relevant. I am not going to exclude it when I'm not sure.

Were you surprised when you got the word from Kylberg?

THE WITNESS: How would I know three months ago if I was surprised?

TRIAL EXAMINER: I don't know.

MR. ARONSON: Well, you knew in January when you testified pretty clearly.

TRIAL EXAMINER: Did he testify he was surprised?

MR. ARONSON: He testified to other matters—as to the dates of the work stoppages. He knew it then but he doesn't know it now. All right.

[fol. 153] Q (By Mr. Aronson) Let me say this to you, Mr. Gunderson. Prior to the work assignment the only demand for this work that had come to you was from Mr. Bonatz, that you needed an Operating Engineer on the welding machine?

A That is correct.

Q And you were not faced with two demands from two union, correct?

A Yes.

Q There was no conflict at this time, was there, sir, as to who was going to do this work?

A The job was—

Q Pardon me?

MR. APRUZZESE: I object to that on the grounds it asks for a conclusion. There may well have been a conflict prior to the demand being made.

Q (By Mr. Aronson) To your knowledge there was no conflict, was there?

A No.

Q All right, let's get back to the date of the first work stoppage, which you can't remember. Let's go to the second work stoppage. Do you remember that?

A No.

Q You don't remember any work stoppage ever taking place?

A I remember the work stoppage, but not the date.

Q Well, would you tell me when or what you remem- [fol. 154] ber about the first work stoppage?

TRIAL EXAMINER: Tell us what you remember.

Q (By Mr. Aronson) Forget when; just tell us what you remember about the first one?

A Well, I remember when we started up the welding machine, the men walked off the rigs.

Q And that's the first work stoppage that you remember?

A Yes.

Q Now you are talking about November 4 and 5, aren't you, Mr. Gunderson?

A I wouldn't know the dates.

Q Well, did you start the welding machine in October?

A If you say so, then I did. I've got to look at the affidavit.

Q I'm not saying so. I want you to tell me. Well, when did the Joint Board come out with its decision?

TRIAL EXAMINER: He is telling you he can't remember these dates. Why are you pursuing him on it?

MR. ARONSON: I'm not asking him for dates, sir. I am asking him for the first work stoppage.

TRIAL EXAMINER: He told you the men walked off the machines when they started the welding machine. They walked off the cranes when they started the welding machine. Whenever that was.

Q (By Mr. Aronson) Do you remember what month [fol. 155] the welding * * *

* * * *

Q Now you made the assignment to the Ironworkers, sir, on September 27. Does that refresh your recollection, September 27?

A It seems to be right, yes.

Q So that from September 27, the day you made the assignment to the Ironworkers, to November 4, as far as you know there was no work stoppage?

A Oh, yes, yes. But I mean I don't recollect the date.

Q I am asking you for the first work stoppage. Now you just told me it was November 4.

[fol. 156] TRIAL EXAMINER: No, he didn't. To my recollection he said November 4 was the date of the award.

MR. ARONSON: Let me strike the question.

Q (By Mr. Aronson) You just testified, sir, that the first work stoppage to the best of your memory occurred when the electric welding machine started?

A That's right.

Q If I told you that the electric welding machine started on November 4, 1965, and that you made an assignment to the Ironworkers on September 27, 1965, would that refresh your recollection as to when the first work stoppage was?

A You said November 4?

Q Yes.

A No, it was prior to that. The award was November 4, right?

Q If I told you the award was on or about October 19 or 20, would that refresh your recollection a little bit? Would it, sir?

A No. I seem to remember that down in Trenton the award was—or that was the injunction, November 4. Maybe the—

Q All right. Now let's get to the day the concrete pump came out to the site. Do you remember when that was?

A Yes, that was around October 15 I believe. No, it came on the job November 1.

Q The pump?

[fol. 157] A Yes.

Q Was there a work stoppage before the pump came on the job?

A Yes, there was a work stoppage.

Q Do you remember how soon before the pump came on the job there was a work stoppage, approximately?

A I'd say a couple of weeks prior to that.

Q Now would that have been the first work stoppage or was there one before that, if you remember?

A I know they went off once and came back the next day. Then they come back again—they went off about three or four days. What date I don't recall.

Q Is it your testimony that the first work stoppage, the employees went off for how long?

A I'd say for a day. They came back the next day and started their rigs, if I remember right.

Q How many employees did you have on this first work stoppage?

A Engineer and Oiler.

Q Do you know their names?

A Mr. Cherry was the engineer. The oiler I wouldn't know. I would have to look on the payroll.

Q Now this electric welding machine. Prior to September 27, which is the date you made the assignment to the Ironworkers, is it not a fact that an Operating [fol. 158] Engineer was starting this machine, had started it for a period of at least two or three days, isn't that so?

A On my job?

Q That is correct. Do you remember that?

A No.

Q Do you remember that welding occurred before November 4 and 5 or before the time the men walked off the rig, as you have testified? There was welding on the job, wasn't there?

A An engineer started that machine?
Q Was there welding on the job before the assignment to the Ironworkers—of the starting and stopping of the machine?
A No.
Q There was none?
A Not to my recollection.
Q There was none at all?
A Not to my recollection.
TRIAL EXAMINER: You received orders to make the assignment before the machine was actually in operation?
THE WITNESS: Well, that's the orders I got.
TRIAL EXAMINER: Yes.
Q (By Mr. Aronson) Well, I just want to know this. Is it your testimony that the machine was not in operation.
A I can't read my testimony. I don't recall what I—
Q I am asking you now, sir. Forget what you said three months ago. Do you remember now?
[fol. 159] A What what?
Q About whether or not the electric welding machine was in operation, whether there was any welding being performed prior to the date that you made the assignment to the Ironworkers?
A Not on my job, no.
Q Not on your job?
A No.
Q Was Bill Cherry working on your job?
A Yes.
Q In September?
A Yes, on the cranes, yes.
Q And do you know whether he started this electric welding machine prior to September 27? Do you know, Mr. Gunderson?
A Prior to—
Q September 27. Did Mr. Cherry start this machine?
A To my recollection I asked my ironworker foreman to start it. Now whoever started it I wouldn't know.

Q You asked your ironworker foreman to start the machine prior to the assignment that you made to the ironworkers to start it?

A Not prior to the assignment. After the assignment.

Q I am talking about before the assignment.

TRIAL EXAMINER: He said it didn't operate then.

THE WITNESS: There was no machine going at that time.

[fol. 160] TRIAL EXAMINER: He said that several times.

Q (By Mr. Aronson) Mr. Gunderson, did you ever hear Mr. Bonatz say to an operating engineer who was working on your machine that he should walk off the job?

A No.

MR. HANNON: Objection. He didn't say what machine.

MR. ARONSON: Any machine.

TRIAL EXAMINER: Oh, any machine.

Q (By Mr. Aronson) Did you ever hear Mr. Bonatz or any other shop steward of Local 825, any lead engineer of 825, say to any of your employes, "Walk off that machine"?

A No, no.

Q Are you positive of that?

A To the best of my memory.

Q Now nobody from Local 825, a shop steward of Local 825, a lead engineer who is a member of 825, at any time ever told you that they were going to tell that somebody to walk off the machine, did they?

A No.

Q Now you called Local 825 for men at sometime or another during one of these work stoppages while the men were out and not working, didn't you, sir?

A Yes, I believe so.

Q And they never refused to send you any men, did they?

A No, they sent the men down.

[fol. 161] TRIAL EXAMINER: Did the men go to work?

THE WITNESS: The men showed up.

TRIAL EXAMINER: That wasn't the question I asked you. I asked if they went to work?

MR. APRUZZESE: Can you answer that question, Mr. Gunderson, that the Trial Examiner just asked you?

THE WITNESS: At what instant?

TRIAL EXAMINER: Well, you just testified that when you regular operators were not working, you called the hall, you called somebody for more men?

THE WITNESS: Yes.

TRIAL EXAMINER: And the men showed up on the job. They showed up. Did they go to work?

THE WITNESS: I've been calling right along for men, and they always showed up and went to work.

TRIAL EXAMINER: And they went to work?

THE WITNESS: Yes. I called yesterday—

TRIAL EXAMINER: I am not talking about yesterday. I am talking about this period back in October-November—if they went to work when they showed up then—when the other operators were not working?

THE WITNESS: Well, there were several occasions where we sent telegrams to them and the men showed up on the job.

TRIAL EXAMINER: So they showed up on the job, but did they go to work? That's a simple question.

[fol. 162] THE WITNESS: I don't remember that time. I remember lately that any time we'd call for an operating engineer they always went to work.

Q (By Mr. Aronson) In the months of September, October, and November when you called up for engineers and the hall sent them down, they always went to work?

A Yes. No problem.

Q There were no problems, right?

A No problems.

TRIAL EXAMINER: You are telling me now that these men were called and went to work when the other operators were not working? You had operators on the job and they didn't work so you sent to the hall and the men they sent down went right to work?

THE WITNESS: There was one occasion I believe where we called up and the men came down and they

conferred with the other operators and we didn't see them after that.

TRIAL EXAMINER: But they didn't go to work that day?

THE WITNESS: I don't know what day.

TRIAL EXAMINER: I don't care what day it was.

Q (By Mr. Aronson) Are you sure of that, Mr. Gunderson, that the Operating Engineers came down and didn't go to work?

A Yes, at one time an engineer and oiler came down and—

Q You had asked for them from the hall, right?

A From the hall, yes.

[fol. 163] Q And did they give you W-2 forms that date, do you remember? Did you sign them up?

A That is not my department. The timekeeper signs them up.

Q Now the day that this electric welding machine was started, which you testified to was sometime in October —is that the best of your memory?

A It was in October, yes.

Q Late October or early October?

A I wouldn't know.

Q No idea?

A I think it was the early part of October.

Q The early part of October?

A Yes. What date I wouldn't know.

Q If I were to tell you that the Joint Board award came out on October 19 or October 20 would you change your testimony?

A Then it was before the Joint Board award.

Q In other words, you started the electric welding machine before the award?

A Yes.

Q And that's the day that the operators came off their rigs and surrounded it—is that what you said in your earlier testimony here in this proceeding?

A On what date?

[fol. 164] Q The day that you started the machine.

A Yes, I believe so.

Q That was before the Joint Board award?

A Yes.
Q It wasn't afterwards?
A Well, I've got to read my testimony.
Q I am asking you now—do you remember whether it was before or after?
A I don't remember, no.
TRIAL EXAMINER: We have been through all this.
MR. ARONSON: Well, he is testifying and I don't know whether he is saying he doesn't remember—
TRIAL EXAMINER: Well, he is saying he doesn't remember. It is very clear from his testimony that there isn't much he does remember in the way of dates and the chronology of events.
MR. ARONSON: Among other things. I would agree with you.
TRIAL EXAMINER: Well, that's your comment; not mine.
Q (By Mr. Aronson) Now the day the electric welding machine was started for the first time, what happened?
TRIAL EXAMINER: I want the record to show that there has been long pauses before the witness answers questions.
THE WITNESS: I beg your pardon?
TRIAL EXAMINER: I am talking to the reporter.
Q (By Mr. Aronson) Do you understand the ques-
[fol. 165] tion, Mr. Gunderson?
A Yes. At that time I believe the engineer and the oiler walked off the rig if I remember right. Then they came back the next day.
Q The next day?
A Yes.
Q The machine was started the next day, too, was it?
A No, I believe we let the machine stay idle for a while if I remember right.
Q In other words the machine was started the one day?
A Yes.
Q The engineers walked off. Then the next day following that day the machine was idle?
A Yes.

Q At your directions?
A I don't recall.
Q Well, let me ask you this, Mr. Gunderson. Would there be anyone else from White Construction Co. at the site who would have the authority other than you to idle this electric welding machine or to cause it not to operate?
A No. I give the orders.
Q Did you give the orders not to run this machine?
A I believe at that time to keep the rig going, to unload steel and so forth, we kept the welding machine not operating.
Q You say that the engineers walked off the rig on [fol. 166] the first day that you started the machine, is that right?
TRIAL EXAMINER: That's what he said. I know that.
THE WITNESS: Yes.
Q (By Mr. Aronson) And the names of the engineers were who?
A Cherry, and an oiler.
TRIAL EXAMINER: An oiler whose name he doesn't know.
THE WITNESS: I don't remember the name of the oiler.
Q (By Mr. Aronson) Was it Mr. Bonatz?
A No.
Q It wasn't Mr. Bonatz?
A No.
Q When they walked off this rig, what did they do?
A They came back the following day.
Q Well, what did they do, just walk off the job?
A I believe so.
Q They never surrounded the rig or anything, did they?
A Not that day I don't believe, no.
Q Did they at any time surround the rig?
A Yes, later on. I don't know what date though.
Q How much later on?
A A couple of weeks.

Q A couple of weeks after the first time you started it, they surrounded the rig?

A Yes.

[fol. 167] Q They surrounded the electric welding machine?

A Yes.

Q This would be after the District Court injunction?

A I wouldn't know. I've got to look at my dates.

Q What if I told you the District Court injunction was November 8, 1965—and take it from me that's the day it was, sir, as is in the record, in evidence. Are you telling me now that after November 8 the Operating Engineers surrounded this electric welding machine?

A No, not after November 8.

Q It must have been before November 8, is that right?

A It must have been before November 8.

Q Do you remember when? Does that help to refresh your memory?

TRIAL EXAMINER: As to what?

MR. ARONSON: As to whether it was before November 8.

THE WITNESS: It must have been before. I don't recall the date.

Q (By Mr. Aronson) You don't recall the exact date then, is that right?

A No.

Q Did they speak to you, the engineers, on this date that they surrounded this machine?

A No, my ironworker foreman was telling me about it.

Q Your ironworker foreman?

[fol. 168] A Told me about it, yes.

Q What's his name?

A Smith.

Q What did he tell you?

A That the Operating Engineers were standing around the machine.

Q Was anybody else standing around the machine?

A Could have been.

Q Did you see the Operating Engineers standing around the machine?

A Yes, later on during the day.

Q How many did you see?

A Well, a couple—two or three. I don't recollect.

Q Were they all your employees?

A Pardon?

Q Were they all White's employees?

A I believe so.

Q Did you have three employees or engineers on that date?

A I think that day I had, I believe I had four rigs and I had probably four employees.

Q You had four rigs and four employees?

A No, two rigs and four employees.

Q Now there was a day, was there not, Mr. Gunderson, when Bill Bonatz was working on a crane that broke down, is that right?

[fol. 169] A That's right.

Q And Mr. Bonatz had to fix this crane, didn't he?

A That's true.

Q He left the job to get parts for it, is that right?

A That's right.

Q You know that's why he left, isn't that so?

A (Witness shakes his head)

Q Your shaking your head means yes?

A Well, that's what it figures he did, you know.

Q Was there any doubt in your mind that this machine was broken?

A Well, I always take the guy's word for it.

Q Did you inspect the machine to see if it was broken?

A I haven't got the knowledge for that.

Q Did you get the bill for the parts that Mr. Bonatz bought?

A I believe it was handled through my timekeeper, yes, if I remember.

Q Did you ever see it?

A No.

Q Now there was a day when Robert Illario came to you, is that correct?

A That's right.
Q Did you have a conversation with him?
A Yes, I did.
[fol. 170] Q What was the conversation?
TRIAL EXAMINER: Let's identify Mr. Illario. I think he is identified elsewhere, but Mr. Illario is a member of Local 825.
Q (By Mr. Aronson) Did you have a conversation with him?
A Yes.
Q What was it?
A Well, about him being master mechanic I believe.
Q What did he say to you?
A I don't recall the conversation.
Q Can't you remember what he said?
A He was the new master mechanic.
TRIAL EXAMINER: He told you he was the new master mechanic?
THE WITNESS: That's right.
Q (By Mr. Aronson) Did he ask you to put him on as a master mechanic?
A Correct.
Q At the time how many employees did you have?
A Five.
Q Now this is the normal practice with 825, isn't that so, when there are five employees, to put on a master mechanic?
MR. HANNON: Objection.
MR. APRUZZESE: Can we fix the point in time as to the conversation with Mr. Illario?
[fol. 171] MR. ARONSON: I would love to, Mr. Apruzzese.
Q (By Mr. Aronson) Mr. Gunderson, could you tell me approximately when you had the conversation with Mr. Illario? In what month?
TRIAL EXAMINER: This would be the first conversation when he came down and announced he was the new head mechanic, is that right?
THE WITNESS: I'd say about the middle of November.
Q (By Mr. Aronson) The middle of November?
A Yes.

Q When Mr. Illario came down, did he say to you, "I am the new master mechanic," or "will you put me on as master mechanic?" Or, what did he say?

A Well, I don't really—

Q Well, did he ask you for a job?

A How can I remember it back in November if he said, "I'm the new master mechanic," or I'm not the new master mechanic—I don't remember. He probably said, "I'm the new master mechanic."

Q I don't want to know what he probably said.

TRIAL EXAMINER: He doesn't remember his exact words. Let's stop this quibbling. I am not an infant in this business.

MR. ARONSON: Well, sir, if I may say in the record, the way your statement goes, Mr. Trial Examiner —and this is not the witness's testimony I don't believe— [fol. 172] TRIAL EXAMINER: He certainly did. He said he knew that this was the new master mechanic when he came down there and told him that.

MR. ARONSON: Let me ask the question of the witness then.

TRIAL EXAMINER: All right.

Q (By Mr. Aronson) Before anyone can go to work for your company they have to be hired by you, isn't that so?

A That's true.

Q Did Mr. Illario, in addition to saying he was the new master mechanic, ask you to put him on in that position?

A That's true.

Q What did you say to Mr. Illario?

A I told him one crane was obsolete and I was going to knock it off that same day so that only left me three men.

Q When did you tell that to Mr. Illario?

A I don't know whether it was forenoon or afternoon.

Q When he came down and said to you, "Look, I'm the new master mechanic here, you've got five men," what did you say? Is that when you said to him, "Well, I'm going to knock them off"?

A No. Then I told him that I would find out about it, check on it.

Q Okay. And then what did you do, if anything? Did you check on it?

[fol. 173] A Yes.

Q Who did you check with?

A What?

Q Who did you check with, Mr. Gunderson?

A I didn't check with anybody. Then I found out that the rig was no good and I held him off that way.

Q And what did you do, lay off two men because the rig was no good?

A Yes. The P&H crane was no good.

Q That would bring you down to three men?

A Yes.

Q Did you tell this to Mr. Illario that you only had three men?

A I don't recollect.

Q Well, didn't there—well, didn't he thereafter, after the first time, ask you again to put him on as master mechanic?

A That's true.

Q And what did you say to him?

A I told him to stand by, I'll find out.

Q And did he stand by?

A Yes.

Q For how long?

A Well, then I told him later on in the afternoon that I couldn't sign him on, that I had only three men.

Q This would be the same day that all this happened?

[fol. 174] A Yes.

Q Now after you told him that you only had three men, did he at any time ask you to put him on as as master mechanic when you had less than five men?

A No, no.

Q Now did you have any other conversation with Mr. Illario this day when he asked you to put him on as master mechanic?

A No, I had some slight talk with him about the pump machine, but that's about all.

Q What was the talk about the pump machine?
A Additional men on the pump machine.
Q Who said what, as best you can recall?
A Well, if I recollect right he wanted a couple of additional men on the pump machine.
Q What did he say, do you remember?
A I don't remember exactly word for word.
Q What did you say when he said he wanted a couple more men?
A I said I believe there's only one man, one engineer, on a pump machine.
Q What did he say?
A Christ, I can't remember a conversation like this.
Q As best you can recollect?
A I don't remember. We talked about it and that's it.

[fol. 175] TRIAL EXAMINER: I am going to call a five-minute recess at this time. I have a phone call to make.

(Brief Recess)

TRIAL EXAMINER: Back on the record. You are still under oath, Mr. Gunderson. Would the reporter read back the last few questions and answers before the recess.

(Reporter reads back the last two questions and answers.)

TRIAL EXAMINER: I am going to request the witness to refrain from using profane language on the record. I have no objection to it anywhere else but I would like to have it kept off the record. Unless of course you have to repeat what somebody told you. In that case, if you remember you would have to repeat it verbatim.

THE WITNESS: This is the construction business.

TRIAL EXAMINER: I know the construction business. I know the longshoremen business, too.

Q (By Mr. Arnson) I think we were at the stage where Mr. Illario had asked you to put him on as master mechanic and you eventually said no, you only had three

employees, and you told him that you wouldn't, is that correct?

A Yes.

Q When you started to set this pump up, the first day, you had a conversation with Mr. Bonatz, isn't that so?

A That is correct.

Q What did Mr. Bonatz say to you?

[fol. 176] A I need one engineer on the pump.

Q Now isn't it a fact, Mr. Gunderson, that Mr. Bonatz also said to you that for the present you need one engineer on the pump? Didn't he say "for the present"?

A I believe so, yes.

Q So that at no time did Mr. Bonatz tell you, on this occasion, that the one man for the pump was all you were ever going to need on that pump, isn't that correct?

A I believe it was one man, that's all they needed on the pump.

Q At that time, isn't that correct?

A Yes.

Q Thereafter did Mr. Illario tell you that you needed two more men on the pump?

A He did.

Q As a matter of fact when he told you this there were some laborers working on the pump, isn't that so?

A Right.

Q And Mr. Illario said to you, "Well, I realize that," —or words to this effect—"that you need that pump set up right now so we will let the laborers go until I get the other two engineers," isn't that right?

A Correct.

Q And then he got two more engineers, correct?

A Right.

[fol. 177] Q Did you ever tell him prior to the time he called for the engineers that he shouldn't call for them?

A No.

Q As a matter of fact you told him it was okay to call for them, right?

A I don't remember now, but I might have—I don't know.

Q But you remember that you didn't tell him not to call for them?
A I remember the men showed up.
Q Right. Did you put them on?
A No.
Q Why?
A I felt we only needed one engineer on the pump.
Q But you didn't say that to Mr. Illario when he told you he was going to call for two more?
A I didn't sign him up.
Q Did you say to Mr. Illario when he said he was going to call for two more, "Don't call for them, I don't need them"?
A I don't recall that.
Q Isn't it a fact that you gave him the impression —and in fact you even said to him, "Call for the two men"?
A No, he had already called.
Q You mean he had already called for the two men before he asked you to put them on?
A I believe so.
[fol. 178] Q Did he say that to you?
A I don't remember at that time, no.
Q When you said to Mr. Illario that you weren't going to put the two men on the pump, what, if anything, did he say and what then occurred, if anything, if you remember?
A Well, the laborers hooked up the pump and then on the following day we were going to pour concrete.
Q Now, at the time that Mr. Illario came to you and said that you needed two more men on the pump, was there an Operating Engineer on the pump?
A Yes.
Q That would be Mr. David Bodine?
A That is correct.
Q Now the following day did the concrete come?
A That's right.
Q Were there any engineers there?
A That is correct.
Q Who?
A Bodine.

Q Anybody else?
A Not on my payroll, no.
Q Were there any other engineers there? Forget whether they were on your payroll or not. Were they near this concrete pump machine?
A You mean when they were ready to pour concrete, [fol. 179] during the day, or when?
Q Do you know what time Mr. Bodine arrived?
A He was there 8 o'clock in the morning.
Q When Mr. Bodine arrived at 8 o'clock in the morning was there any other engineers there with him? Not on your payroll, but other engineers with him?
A There was over at the Poirier-MacLane shanty; not on my place.
Q Did Mr. Bodine start the pump?
A When the concrete came I asked him to start the pump.
Q And what did he say to you?
A He said he had orders not to start it.
Q Did he start it?
A No, we didn't pour no concrete.
Q Did he start the pump? That is all I want at this point.
A I don't remember if he started it or not, but we didn't pour no concrete.
TRIAL EXAMINER: But he told you he had orders not to start it?
THE WITNESS: Yes.
Q (By Mr. Aronson) Did he tell you who gave him orders not to start it?
A I don't remember who gave him orders.
Q Did he tell you who?
A I don't remember him telling me, no.
[fol. 180] Q Did Mr. Bodine tell you who gave him orders not to start it?
A No.
Q Did you ask him?
A No.
Q What did you say when he said to you, "I have orders not to start the pump"?

A "Okay." On November 16—or the 17th—I ordered, at ten o'clock, I ordered a yard of concrete.

Q Correct.

A At ten o'clock I went to the Poirier-McLane shanty. I told Bodine to start the pump. He said he had orders not to start the pump. I didn't pour no concrete.

Q Now this was around 10 o'clock—

A That was around 10 o'clock on the 17th.

Q Now let's go back—

A I'm remembering now.

Q Your recollection is very good on that.

A My recollection is going to be a helluva lot better from now on.

TRIAL EXAMINER: Please eliminate the profanity from the record.

Q (By Mr. Aronson) I believe from November 17 until December 21 the concrete pump was not used, is that correct?

A That is correct.

[fol. 181] MR. ARONSON: May I just have a moment, sir?

TRIAL EXAMINER: Yes.

(Brief Pause)

TRIAL EXAMINER: All right.

Q (By Mr. Aronson) Was the electric welding machine, if you can remember, on or about November 17 in operation?

A On November 17?

Q Yes.

TRIAL EXAMINER: We were talking about the pump and now we are into the welding machine?

MR. ARONSON: That is correct.

THE WITNESS: I believe that was in operation November 17.

Q (By Mr. Aronson) There did come a time when it broke down, is that correct, and something happened to it?

A Yes, the wires were cut.

TRIAL EXAMINER: Of course there was a breakdown if the wires were cut.

THE WITNESS: Yes.

Q (By Mr. Aronson) Since December 21 have you utilized the concrete pump?

A Since what date?

Q Since the day everybody returned to work.

A Since December—

Q The 21st.

[fol. 182] A Oh, yes.

Q You have utilized the pump?

A Yes.

Q Who is operating the pump—an engineer?

A An engineer.

Q Isn't it a fact that there are three men working on this pump the greater majority of the day since it has been in operation? Isn't that so?

A Three men? Only one.

Q One operator. And have there not been two laborers who have been there to assist in the cleaning out of the pump which occurs quite frequently?

A Three or more laborers, yes.

Q Right. In fact sometimes there has been how many people at this pump?

A Well, sometimes four or five laborers hooking it up.

Q So that it is not unusual to have three or more people on this pump at any one time, is it?

A You can have as many as you want so long as it is not going to cost money.

Q Well, what I am saying is this, sir. It is not unusual for you to have three or more men working on this pump at any one time?

A No, no.

Q In fact it is usually necessary to have three or [fol. 183] more men?

A That's right.

TRIAL EXAMINER: All day long?

THE WITNESS: No, no. When you hook it up and when you clean it out later.

Q (By Mr. Aronson) As I understand it—now you tell me if I'm wrong, Mr. Gunderson—these pumps fill up maybe five to seven times—maybe even more—in the

course of a normal day and have to be cleaned out, isn't that so?

A No. You can start at 8 o'clock in the morning, work it as long as you want, and then take it apart and clean it out.

Q How many times do you people clean it out?

A I had a pour the other day where I started at six o'clock and I cleaned it out at 7:30 at night.

Q How about other days?

A Well, other days you might have a small pour. She'll start in the morning—

Q Well, that would be the normal cleaning of the machine. How about the plug-ups? How often does that occur in the machine?

A I believe we've had one or two plug-ups since we started on the job.

Q Isn't it true, Mr. Gunderson, that there's about one or two plug-ups every day on the machine?

[fol. 184] A Not if you start it right. If you put the sand and sement through the pump you don't need no plug-ups.

Q Now isn't it a fact that at no time did any representative of Local 825, shop steward of Local 825, member of 825, or lead mechanic or lead engineer, ever say to you in a serious tone that we want four men on a crane?

A No, no, no.

Q They never said that?

A No.

Q Well, did Mr. Behrend ever say that to you, that he wanted four men on a crane?

A No.

Q How about Mr. Bonatz, did he ever say it?

A No.

Q How about Mr. Illario, did he ever say it?

A He said he was going to bring in two mechanics once and he brought them in, but I didn't think he meant to.

Q He was joking and you knew it, right?

A I don't know.

Q Well, you said "bologna," didn't you?

A Well, I said, "bologna."
Q And you were laughing?
A Well, I didn't put them on. We will leave it that way.
Q Well, you were laughing, weren't you?
A I didn't put them on.
[fol. 185] Q Were you laughing, sir?
A I never laugh.
Q You are right now. Was Mr. Illario laughing?
A I don't know.
Q But you certainly didn't take him seriously?
TRIAL EXAMINER: Didn't he bring the men to the job? Didn't the men actually come to the job? Or didn't they?
THE WITNESS: They came on the job. I didn't put them on.
Q (By Mr. Aronson) That was the day Mr. Illario told you that there was some sort of a foul-up, isn't that correct? It was the day the four men came out there and he told you there was a foul-up, right?
A That must have been, yes.
Q Is that what he said to you?
A I think that's what he said.
Q And as a matter of fact, after that time he never again asked you to put four men on, did he?
A No.
Q Although there are some cranes where four men do work, isn't that so, two mechanics?
A Never on my job.
Q Do you know on Poirier-McLane's job?
A Not four men on a job. They probably got mechanics but—
TRIAL EXAMINER: You mean four men on a crane.
[fol. 186] THE WITNESS: Not four men on a crane.
Q (By Mr. Aronson) No, but they have two men on a crane, right?
A Yes.
Q And then they might have mechanics who—
A Repairing them, yes.

TRIAL EXAMINER: They wouldn't be repairing a crane that was operating, would they?

THE WITNESS: No. Maybe something happened to the crane—carburetor—anything like that.

Q (By Mr. Aronson) The mechanics would then stand by in case something happened, is that right?

A I'm only on my jobs.

Q No, say on other jobs that you know of, if you know?

A Well, I can only cover one job.

Q You don't know then?

A No.

Q Now on the day that Mr. Illario came with the four men, in the morning, the day we have been talking about, after you said to him that you wouldn't hire the men, what did the men do, do you know?

A I don't know.

Q You don't know?

A No.

Q Now the concrete pump that Mr. Bodine was on, [fol. 187] was he operating it this date?

A What date are you talking about?

Q The day that Mr. Illario came. I think you testified it was on the 17th of November?

A That's correct.

Q Now when Mr. Illario came to you on the 17th with these four men and you had this joking discussion about the cranes, did Mr. Bodine operate the crane—the pump machine, I'm sorry?

MR. APRUZZESE: Your Honor, I would like to strike the paraphrasing of counsel here about the joking about the men. He seemed to think it was a joke. Illario brought them and this man refused to hire them. They want to make a joke out of it. To us it isn't a joke.

TRIAL EXAMINER: I know what the record is, Mr. Apruzzese. The men actually came to the job.

MR. APRUZZESE: Yes, sir. And they were turned down.

TRIAL EXAMINER: That's carrying a joke pretty far to me. I'll say that right now.

MR. APRUZZESE: That's right.

MR. ARONSON: Mr. Trial Examiner, I object strenuously on this record to that statement.

TRIAL EXAMINER: Go ahead and object. You can object to anything I say. I'm not the least bit interested.

MR. ARONSON: I think it is completely out of or-
[fol. 188] der, sir, and I must state it. This witness just testified that as far as he was concerned this was a joke and he didn't take it seriously.

TRIAL EXAMINER: I still say two men coming to the job—that is a joke? You want me to believe that two men coming to a job is a joke? You are treating me as an idiot. Go on with your case.

MR. ARONSON: I would like to take a recess at this time, Mr. Trial Examiner.

TRIAL EXAMINER: Take your recess. You've had enough recesses in this proceeding, I'll say that.

MR. ARONSON: Today, sir?

TRIAL EXAMINER: Not today but during this entire proceeding which started last December. Go on and take your recess. We'll have a five-minute recess.

(Brief Recess)

TRIAL EXAMINER: The hearing will be in order.

Q (By Mr. Aronson) Now, Mr. Gunderson, during these two or three days that we have been discussing—November 15, 16, or 17, did anyone from Local 825, be it either a shop steward, a member, a lead mechanic, or anybody else ever say to you that the reason the Operating Engineers were insisting upon three men on a concrete pump was because of an electric welding machine?

A I don't believe so. I don't recollect that.

[fol. 189] MR. ARONSON: I have no further questions for the witness.

REDIRECT EXAMINATION

Q (By Mr. Hannon) Mr. Gunderson, your assignment, as I recall your testimony, was on September 27 of the electric welding machine, the starting and stopping of the electric welding machine to the ironworkers. Since

that date to this date who has started and stopped the electric welding machines at the Oyster Creek jobsite?

A The ironworkers.

Q Do you have electric welding machines presently on the job?

A I have electric welding machines on the job.

Q And who is starting and stopping them now?

MR. ARONSON: I object. It is irrelevant as to who is doing it. The mere fact that—

TRIAL EXAMINER: The point of the period may be irrelevant as to what is being done now. The complaint relates to a very definite period. It can't relate to a period subsequent to the complaint, unless it was amended. You have not. I will sustain the objection on that ground.

Q (By Mr. Hannon) During this period of time—

TRIAL EXAMINER: Fix it, please.

Q (By Mr. Hannon) From the time the electric welding machine came on the job up until the time you [fol. 190] last testified, who was doing—let me rephrase that. From September 27, 1965, when the electric welding machine starting and stopping was given to the Ironworkers, up until the time you previously testified, who did the starting and stopping of that equipment?

MR. ARONSON: I object. It is irrelevant as to the last time he testified, which is subsequent to the issuance of the complaint, and on the further ground that it is irrelevant as to who did it. The mere fact someone does it is irrelevant unless they are claiming it.

TRIAL EXAMINER: Confine it to the period of the complaint. I will grant the motion as to the relevancy in point of time from the issuance of the complaint to the time the witness testified. On the other hand I will permit the question as to the preceding period.

MR. HANNON: Your Honor, this complaint was issued on November 17, 1965.

Q (By Mr. Hannon) I will now ask you, Mr. Gunderson, from the time you made the work assignment of the starting and stopping of the electric welding machine to the Ironworkers on September 27, 1965, until November 17, 1965, who did the starting and stopping of the electric welding machine?

MR. ARONSON: Objection. The mere fact, as I just stated before, that they did it is irrelevant. It doesn't mean they claim in. And I can refer the Trial Examiner to several cases where employees, members of vari-
[fol. 191] ous crafts, performed work and the Board said that means absolutely nothing because the mere performance is not claiming.

TRIAL EXAMINER: Objection is overruled. Go ahead.

THE WITNESS: Ironworkers and carpenters.

TRIAL EXAMINER: The fact that I permit evidence doesn't mean that I am going to rely on the evidence. It merely means that it is admissible in my opinion and I want it in the record for possible review.

Q (By Mr. Hannon) I am now referring to that work that was assigned to the ironworkers. Who is performing that work in that period of time?

A The ironworkers started.

Q Mr. Gunderson, is your recollection of these incidents that were mentioned to you on cross-examination better at the time that you first testified or better at this time?

MR. ARONSON: I object. That's an improper question.

TRIAL EXAMINER: It is asked in almost every Board proceeding.

MR. ARONSON: And it is improper in every Board proceeding, if I may so state.

TRIAL EXAMINER: We are each entitled to his own opinion.

Q (By Mr. Hannon) Was your recollection of these incidents better on January 6, 1966, or is it better now?

MR. ARONSON: I object.

TRIAL EXAMINER: You have an objection to this
[fol. 192] entire line of questioning with respect to his recollection.

MR. ARONSON: Yes.

TRIAL EXAMINER: Did you remember better in January than you do now?

THE WITNESS: I can remember better at six o'clock in the morning than I can 12 o'clock at night.

TRIAL EXAMINER: That doesn't answer any question. I might say that I can, too.

THE WITNESS: What's my best recollection? I may leave here and my recollection picks up like this (snapping his fingers.).

TRIAL EXAMINER: Then you can't answer the question, you don't know?

THE WITNESS: No. How can you answer a question like that?

Q (By Mr. Hannon) Now you mentioned that Illario brought out two engineers to go on the crane, which would have made four engineers on the crane?

A Yes.

Q You also mentioned that you went over to get Bodine at the Poirier-McLane shanty?

A Yes.

Q Who else was over there with Bodine at the time?

MR. ARONSON: My recollection of the testimony, and I might be wrong, is that the witness didn't testify to that.

[fol. 193] TRIAL EXAMINER: This witness has testified before, you know, part of which you weren't here for.

MR. ARONSON: I have read it several times. I think I am probably as familiar with it as anybody in the room. Maybe even more so because I've read it closer than probably most people have. And I don't believe the witness's testimony today was to that effect. And I think that's what Mr. Hannon is referring to. If he isn't, then let him so state.

MR. HANNON: The witness on cross-examination stated that he went over to get Mr. Bodine over at the Poirier-McLane shanty to start the concrete pump when the truck came in with a load of concrete.

MR. APRUZZESE: That's right.

MR. HANNON: I am asking him now who was there with Bodine at that time.

MR. ARONSON: If that is what he testified to, all right; if not, then I object.

MR. APRUZZESE: He testified to that.

THE WITNESS: Bodine was there with other men.

Q (By Mr. Hannon) Do you know who these other men were?
A It was Operating Engineers.
Q How do you know that they were Operating Engineers?
A Well, it is an Operating Engineer shanty.
Q Had you seen these men before?
A Yes, a couple of the fellows came in the day before.
[fol. 194] Q Who had brought them in the day before?
MR. ARONSON: I object. There is no evidence in the record that anybody brought them in the day before.
TRIAL EXAMINER: Do you know how they got in the jobsite the day before?
THE WITNESS: They go through the gate—nobody on may payroll.
TRIAL EXAMINER: Were they working on the jobsite?
THE WITNESS: Not working on my payroll. I don't care about other people's payroll.
Q (By Mr. Hannon) Had anybody asked you to put them on your payroll?
TRIAL EXAMINER: They weren't on his payroll.
MR. HANNON: I am asking if anybody asked him to put them on his payroll.
MR. ARONSON: I object. It is a leading question.
TRIAL EXAMINER: Not if he asked if anybody asked him.
THE WITNESS: I believe two of the fellows was the two men he brought the previous day and which I didn't sign up.
TRIAL EXAMINER: Who is "he"? Illario?
THE WITNESS: Illario, yes.
TRIAL EXAMINER: Illario or Bodine?
THE WITNESS: Illario, yes.
TRIAL EXAMINER: So he brought two men in the previous day and these men, as I understand it, did not work?
[fol. 195] THE WITNESS: Did not work.
TRIAL EXAMINER: You didn't put them on?
THE WITNESS: Right.
TRIAL EXAMINER: Now they came back the next day, is that right, and they were there in the shanty?

THE WITNESS: Yes.

Q (By Mr. Hannon) After you saw them in the shanty did you see them anywhere else on the job?

A I saw them later on around the pump machine.

Q Around whose pump machine?

A Our pump machine.

Q Who else was there?

A Other men.

Q Do you know who they were?

A Well, I don't recollect right now. There was other men around there.

TRIAL EXAMINER: Was Illario there?

THE WITNESS: No, I didn't see him around.

Q (By Mr. Hannon) Was Bodine there?

A Bodine probably was there, yes, because he's on the machine.

Q Was the truckload of concrete there?

A Yes, the truckload of concrete was there.

Q And as I recall your testimony this was at a time the concrete wasn't poured?

[fol. 196] A That's right, yes.

Q And what were these two men doing there?

A Hanging around the machine.

Q You have used the terminology and you have been asked questions about a rig. What is a rig?

A Well, it is a crane. We call it a rig.

* * * *

Q (By Mr. Aronson) Mr. Gunderson, I believe you mentioned just a minute or two ago that from the time you made the assignment to the ironworkers until the date of the complaint or some other date, both the ironworkers and the carpenters have worked on this electric welding machine?

A No. Only ironworkers to start off with. It is just recently if the carpenter welds some ties or something, they use the machine. Only the ironworkers use the machine. The ironworkers use the machine to weld structure, reinforcements, and so forth.

Q But now the carpenters use the machine as well?

A Occasionally on Richmond tie-rods.

Q Could you tell me, sir, for how long a period that's been, approximately now, that the carpenters have used the welding machine?

A Lately, occasionally they use it.

[fol. 197] Q Well, the last couple of weeks, a month, two weeks?

A The last couple of weeks.

MR. HANNON: I would move to strike that since it took place subsequent to the time of all events.

TRIAL EXAMINER: I am not going to strike it. I will accept it as an objection, but it isn't prejudicial to you. It can't be if I am not going to consider it as coming within the relevant or crucial period of time.

Q (By Mr. Aronson) Isn't it a fact, Mr. Gunderson, that the carpenters have started this machine as well?

MR. HANNON: Objection.

MR. APRUZZESE: Objection.

TRIAL EXAMINER: I didn't hear the question.

MR. APRUZZESE: It is not relevant. He said isn't it a fact, Mr. Gunderson, that the carpenters have started it. We object. It is not relevant.

TRIAL EXAMINER: In what period of time?

MR.APRUZZESE: The last two weeks.

TRIAL EXAMINER: Sustained. We have enough problem with the events that took place in the critical period without going to ones that are taking place now.

MR. ARONSON: Sir, I realize that you sustained the objection and I don't want to—

TRIAL EXAMINER: Well, I think I sustained same objection to Mr. Hannon's question as to certain [fol. 198] conduct or practices which are taking place at this time.

MR. ARONSON: I never made the objection in that regard. I made it for another reason. However. I believe that it would be relevant—I don't want to argue and belabor it too long—but if you would let me state it on the record that if the employer is contending here that there was a definite assignment in accordance with the Joint Board decision, and that assignment was given to the Ironworkers and nobody else, and then thereafter the employer, even though not in the critical period, assigns

the work or lets another craft perform this work, I certainly think that it would have some relevance.

TRIAL EXAMINER: He may have reneged on his assignment. I don't know what events took place subsequently to this period that we are discussing. Anything could have happened. It could have gone back to the Joint Board. I am not going to go into it for that reason. I am not going to try that issue. I have enough trouble with the issues that have been put to me.

MR. ARONSON: Well, if the employer did renege on its assignment, wouldn't that have some—

TRIAL EXAMINER: No, it wouldn't. I am not concerned with what happened afterward. If you can show that he reneged in this critical period, you might have some bearing, I'm not sure.

[fol. 199] Q (By Mr. Aronson) Now these two men that you say you saw standing around the pump, was the pump working when they were standing around it?

A No.

Q Mr. Bodine had indicated to you he wasn't going to start it, right?

A Correct.

Q You said there were more than two men standing there?

A Yes, I think there was about four men standing around.

Q Do you know who the other two men were?

A Yes, they were men that I refused to sign up.

Q All four of them?

A Yes.

Q All four were men you refused to sign up, they were standing around this machine?

A Yes.

TRIAL EXAMINER: Well, there was Bodine, who you had signed up, hadn't you?

THE WITNESS: Yes, he was there.

TRIAL EXAMINER: Well, he wasn't a man you refused to sign up?

THE WITNESS: No.

TRIAL EXAMINER: My understanding is that only two of the men were men you refused to sign up before.

MR. ARONSON: That was my understanding as [fol. 200] well, that there were four men there, two of whom he had refused to sign up.

MR APRUZZESE: Two of the men he wanted to put on the concrete pump. The other two he wanted to put on the crane. That would make four. That's the reason there were four men. And they weren't put on. Those were the four men that were around the machine.

TRIAL EXAMINER: That's what I'm trying to get from the witness.

MR. APRUZZESE: Isn't that so, Mr. Gunderson?

TRIAL EXAMINER: Wait a minute. This is his witness. You can't ask questions of this witness at this time.

MR. APRUZZESE: I'll ask questions when he is finished.

MR. ARONSON: Not in such a leading manner. Well, maybe we can straighten it out.

TRIAL EXAMINER: That's what I was trying to do.

Q (By Mr. Aronson) Mr. Gunderson, Mr. Bodine was on the pump?

A That's right.

Q Now you've testified there were four men standing around the pump?

A That's right.

Q When you say standing around, what were they doing?

A What's a guy doing standing around?

Q Where they physically holding on to Mr. Bodine [fol. 201] in any manner?

A No, just standing around.

Q Two of these men you testified had been two of the engineers that had come out to the site with Mr. Illario and you refused to sign them up?

A Correct.

Q Now, who were the other two, if you know?

A Two that was supposed to go on a crane as machanics or something, which I refused to sign up. There was a mix-up there somehow.

TRIAL EXAMINER: Then all four of these men were men you had refused to sign up?

THE WITNESS: That's right.

TRIAL EXAMINER: All right, I'm beginning to get it straight—I hope.

Q (By Mr. Aronson) You testified something about a mix-up. What did you say?

A It was something I heard about later.

Q What did you hear later?

MR. HANNON: I object to this.

TRIAL EXAMINER: It would be hearsay.

Q (By Mr. Aronson) Who did you hear it from?

TRIAL EXAMINER: The answer was a shrug of the shoulders.

Q (By Mr. Aronson) Do you know who you heard it from?

A You hear rumors on a job, you know.

[fol. 202] Q What rumor did you hear?

MR HANNON: Objection.

TRIAL EXAMINER: Sustained.

MR. ARONSON: I have no further questions.

TRIAL EXAMINER: Mr. Apruzzese, I believe we have the four men identified to the extent we are going to get them identified. I think we can drop that.

MR. APRUZZESE: Yes. I don't have any questions.

TRIAL EXAMINER: You don't have any more, do you, Mr. Hannon?

MR. HANNON: No, sir.

TRIAL EXAMINER: You are axcused.

(Witness Excused)

TRIAL EXAMINER: Let's recall the witness who went out to get the statement.

TILGHMAN SUFFECOOL

resumed the stand and testified further as follows:

TRIAL EXAMINER: Did you locate that statement?

THE WITNESS: Yes.

CROSS EXAMINATION (Continued)

Q (By Mr. Aronson) Do you have that statement with you now?
A That's right.
Q May I have it please to look at?

(Document handed to Mr. Aronson.)

[fol. 203] THE WITNESS: That is not signed.
Q (By Mr. Aronson) Mr. Suffecool, how many cranes have you had on the job for Poirier-McLane?
MR. HANNON: Objection.
TRIAL EXAMINER: Fix the time.
MR. HANNON: Your honor, there was nothing discussed on direct examination about his equipment on the jobsite.
TRIAL EXAMINER: I'm still going to let him answer it.
THE WITNESS: We had as high as six cranes. We have five. We started off with one.
Q (By Mr. Aronson) Are you familiar with the cranes that White has on the job?
A No, I don't take too much part in the other contractor.
Q So you are not familiar with the cranes?
A I couldn't answer the questions on that.
Q How many engineers do you have on your cranes, working on the cranes?
MR. HANNON: I'd object again.
TRIAL EXAMINER: How many operating engineers employed was asked him on direct.
THE WITNESS: We have on cranes with 100 foot booms two engineers. On shorter booms we have an engineer and an oiler.
Q (By Mr. Aronson) So that you have at least on the crane two engineers on each crane? When I say two I mean two members of Local 825.
[fol. 204] TRIAL EXAMINER: Oh, I was going to say that one was an oiler.
Q (By Mr. Aronson) Is that correct?
A That is correct.
Q Now in addition to engineers and oilers do you have any other members of 825 who perform any work on these cranes?

MR APRUZZESE: I object, Your Honor, for this reason. I don't think that it is relevant to this proceeding as to whether or not Poirier & McLane has any employees in addition to the two Local 825 representatives on the crane. That isn't the issue in this particular case as I see it.

TRIAL EXAMINER: What is the issue with respect to Poirier & McLane?

MR. APRUZZESE: As far as I'm concerned the only issue in this case is that this union engaged in secondary activity for the purposes alleged in the complaint when they struck Poirier & McLane, when they struck—

TRIAL EXAMINER: Well (weren't there threats alleged in this original proceeding that they might put four men on a crane? Aren't you contending that this was a threat under the section of the Act, 8 (b) (4) (ii)?

MR. APRUZZESE: That's right, with regard to White Construction.

TRIAL EXAMINER: I am going to take the testimony then with regard to Poirier & McLane that there may have been [fol. 205] occassions when four men were working on a crane. Now I think I have it pretty clear in my own mind from the previous testimony. Go ahead. Let's have the question re-phrased.

Q (By Mr. Aronson) In addition to the engineers and/or oilers that you have on a crane, do you have other operating engineers who perform work on the cranes?

A They are mechanics that take part in the breakdowns. And the lead engineers, which is the master mechanic.

Q And these mechanics are on stand-by; if the machines break down they are there to fix it, is that right?

A Well, they cover the entire job.

TRIAL EXAMINER: What was that?

THE WITNESS: They cover the entire job, the mechanics do.

TRIAL EXAMINER: You mean all of your operations apart from your crane operations?

THE WITNESS: All the small equipment men, plus the mechanics.

Q (By Mr. Aronson) And this is not unusual to have mechanics for these machines, is it?
A General procedure.
Q General procedure?
A Right.
TRIAL EXAMINER: Let me ask you this. If you had one crane on a job you would have an oiler and the [fol. 206] crane men? You wouldn't have two mechanics or a mechanic for stand-by for that crane? Or would you?
THE WITNESS: Well, any time we work equipment that requires a mechanic, when there is going to be a shut-down we hold the mechanic over.
MR. APRUZZESE: When there is going to be a shut-down, did you say?
THE WITNESS: Where there will be a breakdown.
Q (By Mr. Aronson) What if you had, let's say, a crane and a concrete pump?
A We have none of them.
Q Let's say you did. Have you ever been on a job where you had them?
A Many a time.
Q Did you have mechanics on those situations?
A You have mechanics by them all the time.
MR. ARONSON: I have no further questions.

REDIRECT EXAMINATION

Q (By. Mr. Hannon) Mr. Suffecool, you mentioned that Behrend wasn't your shop steward, right?
A That is correct.
Q Was Mr. Behrend employed by you during September, October, November? That is 1965.
A That's right.
Q What did Mr. Behrend do for you?
[fol. 207] MR. ARONSON: I object. This has been covered by General Counsel in his direct testimony of the witness.
TRIAL EXAMINER: Has it not? Let me see, I don't know. Can you tell me the page?
MR. HANNON: Counsel for respondent has gone over it on cross-examination.

TRIAL EXAMINER: That doesn't mean that you have to go back to it on redirect.

MR. HANNON: He hasn't covered his duties.

MR. APRUZZESE: He apparently inadvertently referred to this man as a shop steward. This is what he first established when he got on the stand today, and when this witness first testified on direct at the previous hearing he said Mr. Behrend was a shop steward.

TRIAL EXAMINER: Now he says he isn't.

MR. APRUZZESE: That's right. That is why Mr. Hannon is asking the question as to what his duties were.

TRIAL EXAMINER: It will be permitted under those circumstances.

MR. ARONSON: Well, sir, maybe if we check the record we will find—

THE WITNESS: You will find where I called him a lead engineer or a master mechanic.

MR. ARONSON: I think he did testify as to his duties. Forget what he classifies him as being a shop [fol. 208] steward or a lead engineer. His duties haven't changed.

TRIAL EXAMINER: Where is the testimony as to his duties? That's what I'm looking for now.

MR. ARONSON: Page 74.

THE WITNESS: And you will see I called him a master mechanic.

TRIAL EXAMINER: (Reading) "Question: Now, what kind of work does Behrend do for you?"

Now I am reading from the record, the transcript.

"Answer: Well,, he orders men in when we need them. He checks their equipment and he has many other activities."

"Question: How do you mean he orders men in?"

Well, that explains his duties.

"Answer: In other words when I need men I notify him the day before and he calls the hall and produces the engineers."

What do you need more than that?

Q (By Mr. Hannon) What is his title on the job, sir?

A Lead engineer or master mechanic. They have two ways of calling it.

TRIAL EXAMINER: They are interchangeable.
THE WITNESS: That's right.
TRIAL EXAMINER: But they do the same work, they have the same responsibilities, no matter what you call them?
THE WITNESS: Right.
[fol. 209] TRIAL EXAMINER: And they are diffferent from a shop steward?
THE WITNESS: That's right.
MR. HANNON: That's all I have.
MR. APRUZZESE: I have one question.
TRIAL EXAMINER: Go ahead.

REDIRECT EXAMINATION

Q (By Mr. Apruzzese) Mr. Suffecool, you have testified that if you have a crane with less than a 150 foot boom you have an engineer and an oiler?
A Less than 100.
Q Less than 100.
A Over 100 you get two engineers.
Q All right, fine. Now let's take the one that's less than 100. You have a crane with an engineer and an oiler?
A Right.
Q And this crane has been assembled and it is in operation. Would you hire two mechanics for that crane in addition to the engineer and the oiler?
A If it is broke down?
TRIAL EXAMINER: No, if it is in operation.
Q (By Mr. Apruzzese) No, if it is operating?
A It is all according to what you have to cover. If the area has a lot of small equipment, other than your heavy equipment—
[fol. 210] TRIAL EXAMINER: Let's forget the small equipment.
Q (By Mr. Apruzzese) Let's forget the small equipment. I am just talking about a crane now, Mr. Suffecool. You have a crane with under 100 foot boom. You have one engineer and and oiler in it. And that crane is in operation. Would you hire two mechanics in addition to those two men from 825 for that crane?

MR. ARONSON: I object, Mr. Trial Examiner. It is a hypothetical question that he has given to the witness. If he did have it, it has no relation to the actual facts in this case.

MR. APRUZZESE: We are getting to the joke in this case. We are getting to the joke in this case. That's what hurts.

TRIAL EXAMINER: I asked that same question myself and didn't get an answer—the one crane is what I tried to pin him down to.

MR. ARONSON: With nothing else on the job?

TRIAL EXAMINER: Yes. Would you have two mechanics? Would you?

THE WITNESS: If I had a breakdown it would require two and sometimes more.

TRIAL EXAMINER: But if you didn't have a breakdown?

Q (By Mr. Apruzzese) If you didn't have a breakdown? This crane is assembled and it is working and as far as you know it is in good working order. Would you [fol. 211] hire two mechanics in addition to the engineer and the oiler on that piece of equipment?

A I would hire one mechanic until I got the breakdown, and if the union agreement required more, than I'd be forced to put on according to the agreement.

Q Right. So that your answer is if this is in good working order, this crane, with an engineer and an oiler, you would not hire two mechanics, isn't that so?

A That's if I only had the crane.

Q Fine. That's all.

MR. APRUZZESE: No further questions.

RECROSS EXAMINATION

Q (By Mr. Aronson) And if you had the crane, in addition to other equipment—

A But if the breakdown occurred then—

MR. APRUZZESE: No further questions.

TRIAL EXAMINER: That wasn't the question you were going to ask.

Q (By Mr. Aronson) If you had the crane and other equipment where there are operating engineers performing work—

MR. APRUZZESE: What other equipment?
MR. ARONSON: Mr. Apruzzese, do you want to cross-examine your own witness? If so go right ahead.
MR. APRUZZESE: Go ahead, finish the question.
[fol. 212] MR. ARONSON: Let me finish my question.
MR. APRUZZESE: Go ahead.
Q (By Mr. Aronson) If you had a rig, two oilers, and other small equipment, as you testified that you have—
TRIAL EXAMINER: That's the witness's phrase, Mr. Apruzzese, on the small equipment on the job.
Q (By Mr. Aronson) —that you have, would it be unusual for you to hire two mechanics?
A Where it required to hire two mechanics, I would be forced to put them on.
MR. ARONSON: All right.
MR. APRUZZESE: I don't have any questions.
TRIAL EXAMINER: You are excused. I believe he is released from his subpena, is he not?
MR. ARONSON: Yes, sir.

(Witness Excused)

GILES WILLIS

a witness recalled to the stand, being first duly sworn, was examined and testified further as follows:

TRIAL EXAMINER: Give your name and address to the reporter?
THE WITNESS: Giles Willis, Forked River Point, Forked River, New Jersey.
MR. ARONSON: Can we go off the record a moment?
TRIAL EXAMINER: Yes.

[fol. 213] (Discussion off the record)

TRIAL EXAMINER: Back on the record.

CROSS EXAMINATION

Q (By Mr. Aronson) Mr. Willis, as I understand if you are employed by Burns and Roe, is that correct?
A Correct.

Q And that would be at this site that we are talking about—Forked River, Oyster Creek,—where Burns and Roes is the general contractor?

A Right.

TRIAL EXAMINER: Just a minute. I want to call the attention of the parties to something in the original transcript that shows direct examination and cross examination. It should have showed your examination as direct and then examination by Mr. Apruzzese. I don't think that it is material in any way. But I want the record to show that the first transcript is in error because there was no cross-examination. This is the first cross-examination on the part of the respondent.

Q (By Mr. Aronson) Mr. Willis, I'm sorry but I didn't hear what your position was with Burns & Roe?

A I am the resident construction manager.

Q Now as such I would imagine that your are familiar with all the work stoppages that have occurred on this site of any of the sub-contractor's employees?

[fol. 214] A I think generally this is a true statement.

Q Well, let's take the best of your recollection, sir. When did the first work stoppage occur on this site, of White's employees, if you know?

A You are talking in the area that is under discussion?

Q That's right.

TRIAL EXAMINER: Starting the latter part of September.

THE WITNESS: October 1.

Q (By Mr. Aronson) October 1?

A Right.

Q That would be the day then when there was a work stoppage for a period of a few hours, is that correct?

A Four hours, I think.

Q Four hours?

A Yes.

Q And then the work stoppage ceased, is that correct, on that day?

A Well, it just depends by what you mean by work stoppage. The men returned to work.

Q They stopped working and then they returned to work about four hours later?

A Right.

Q And that was the first work stoppage from late September to the present, correct?

A I think so.

[fol. 215] Q Is there any question in your mind?

A No.

Q Now on September 30 there was no work stoppage on this site, was there?

A No.

Q And had there been one you would have known? That would have been part of your responsibility or your job to know this, wouldn't it?

(Witness hesitates)

Q (By Mr. Aronson) Well, let me ask you this. I will withdraw that question. Did anyone of your sub-contractors tell you on September 30 that there was a work stoppage?

A No.

Q Did anyone of your sub-contractors tell you subsequent to October 1 that there was a work stoppage on September 30?

A That there was one?

Q Yes.

A No.

Q So as far as you know there wasn't one until October 1?

A Correct.

Q Now, you have no employees at this site isn't that so, Burns & Roe?

A We have employees.

Q You have employees performing consruction work?

A No.

[fol. 216] Q You have supervisory employees and engineers?

A Correct.

Q You don't have any tradesmen?

TRIAL EXAMINER: Craftsmen?

THE WITNESS: No.

Q (By Mr. Aronson) Like operating engineers or other trades, right?

A Right.

Q Now, in the performance of work, sub-contractors' work, what, if any, part do you play in the assignment that the sub-contractors make?

A The labor relations responsibility is wholly within the realm of the contract of the sub-contractor. We do not enter in it unless the sub-contractor gets in some difficulty.

Q What do you mean by "gets in some difficulty"?

A If he has a strike and so forth.

Q Then what do you do?

A We see that he is following the procedures that are set up by the National Joint Board.

Q And in this case did you see that the procedures of the National Joint Board were followed—that we are talking about in this case here?

A I think this is so.

Q Are you familiar with the procedures of the National Joint Board?

[fol. 217] A To some extent.

Q And as a matter of fact was it not Burns & Roe who submitted this dispute of the electric welding machine to the National Joint Board?

A In conjunction with White.

Q Was it?

A In conjunction with White Construction Co.

Q Now I show you General Counsel's Exhibit No. 5, which is a letter—well, I'm not going to describe it. I want you to take a look at it.

(Document handed to the witness.)

Q (By Mr. Aronson) Have you looked at the exhibit, sir?

A I've seen it.

Q And the exhibit refers to a telegram that was sent by Burns & Roe to the Joint Board. Are you familiar with that telegram?

A I know the telegram.

Q Are you familiar with it?

A Yes, I've seen it.

Q Now in addition a formal submission was made to the Joint Board subsequent to that telegram, isn't that so?

A Correct.

Q And that was signed by Mr. Vincent J. Apruzzese, who is the attorney for Burns & Roe in this matter as well as White Construction, is that right?

[fol. 218] A Correct.

Q Now on the exhibit, which is a copy of the submission, the last page thereof states, "Respectfully submitted, Burns & Roe, by Vincent Apruzzese, counsel for Burns & Roe," isn't that so?

A Are you asking me or do you want me to look at it?

(Document handed to the witness.)

Q That's so, isn't it?

A I'll read it and see. Yes, that is what it says.

* * * *

[fol. 224] Q And when were you asked, or when were you informed of the fact of what they were going to do?

A On September 27.

Q Who informed you, sir, if you recall?

A I don't recall.

[fol. 225] Q Well, would it be Mr. Gunderson? Would that refresh your memory?

A If I needed any refreshing I could have remembered it, but I don't remember anyone from White other than Mr. Gunderson being at the jobsite that day.

Q I don't understand your answer. I was just trying to help you. I thought maybe it was Mr. Gunderson.

A Yes, sir. I'm not trying to evade the question.

Q I understand. Was it Mr. Gunderson who told you?

A You asked me first if I remembered and I said I didn't.

Q I am asking you now, sir, was it Mr. Gunderson?

A I told you I didn't remember.

TRIAL EXAMINER: He doesn't remember.

Q (By Mr. Aronson) Are you sure, sir, that the first time you were consulted was on the 27th of September? The first time you were told was on the 27th of September?

A I think you asked me before the first time and I said it was the 27th.

TRIAL EXAMINER: That is the best of your recollection?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: The 27th of September.

Q (By Mr. Aronson) Now on September 29, 1965, did you have a conversation with Mr. Bonatz and Mr. Behrend?

A I did.

Q Where was that conversation?

[fol. 226] TRIAL EXAMINER: Bonatz and who?

MR. ARONSON: Behrend.

THE WITNESS: You asked me if I had a conversation and I said yes.

Q (By Mr. Aronson) Where did that conversation take place?

A You turned around so I didn't hear you.

Q Mr. Willis, I am asking you now.

A I know but you turned around so I couldn't hear you. Talk to me.

MR. ARONSON: Mr. Trial Examiner—

TRIAL EXAMINER: I just don't want a dispute between you and the witness.

MR. ARONSON: I am not antaogonizing him at all. He is obviously antagonizing me.

TRIAL EXAMINER: All right, let's stop this. Did you have this conversation?

THE WITNESS: I had a conversation, yes.

Q (By Mr. Aronson) Where did you have it, sir?

A In my office.

TRIAL EXAMINER: September 29?

THE WITNESS: On the 29th of September, at approximately 8:45 in the morning.

Q (By Mr. Aronson) Was anybody else there?

A No one else was there.

[fol. 227] Q All right. Now during this conversation —strike that.

Who spoke? Did Mr. Bonatz speak?

A They both spoke.

Q Who spoke first, if you recall?

A (Laughing) This is ridiculous.

TRIAL EXAMINER: You don't recall, is that it? Is that your answer, that you do not recall?

THE WITNESS: I don't recall. I don't know what they were wearing either.

TRIAL EXAMINER: You haven't been asked that.

Q (By Mr. Aronson) Did you speak first or did they speak first?

A (Laughing)

TRIAL EXAMINER: If you don't recall, just say you don't recall. I want to get out of here some time tonight.

THE WITNESS: I don't recall.

Q (By Mr. Aronson) What was said by these gentlemen to you, do you recall that?

A Yes. Either one of the gentlemen informed me—I couldn't say which one it was—that the Operating Engineers employed by the various sub-contractors on the job had had a meeting and they had taken a vote and that they had decided that inasmuch as Burns & Roe was the general contractor, the men had decided that Burns & [fol. 228] Roe didn't have a contract with Local 825, they decided that they would cease working for all the sub-contractors on the job.

Q Did they say when?

A After October 1.

Q Now I realize that you have testified that you don't recall which one of the two said it. However, can you think back and attempt to refresh your recollection as to which one of the two said it?

A If I was going to speculate on it I would say Hank Behrend said it, but I wouldn't take an oath to that effect.

MR. ARONSON: Mr. Hearing Officer, if Mr. Behrend said it—and it is the witness's testimony that to the best of his recollection it was Mr. Behrend—I would move that the entire testimony be stricken as hearsay and not binding upon Local 825.

TRIAL EXAMINER: Denied. I have yet to determine whether or not Behrend was an agent of Local 825, I am not going to determine that until the end of the case.

MR. ARONSON: I would think, Mr. Trial Examiner, that prior to the receipt of such evidence that it would be General Counsel's obligation to establish that Mr. Behrend is an agent of Local 825, and I submit that that has not been established.

TRIAL EXAMINER: I don't agree with you. I don't know whether it has been established or not. Pro-
[fol. 229] ceed. Motion denied.

Q (By Mr. Aronson) Either one of these two gentlemen told you that employees, members of Local 825, had taken a vote, is that correct?

A That is correct.

Q Did you have a conversation with either of these two gentlemen thereafter?

A Yes.

Q When?

A The following day, on the 30th.

Q And do you remember who was there?

A Yes.

Q Who?

A Hank Behrend, Bill Bonatz, Bobby Illario, and Gatti.

TRIAL EXAMINER: Excuse me. Illario's name is spelled incorrectly? There is no "Allario" and an Illario, was there?

MR. ARONSON: No, sir, it is an "I."

MR. HANNON: I would point out to Your Honor that there are many typographical errors in the original transcript. I think the reporter here will get many of these straightened out with the testimony that we are having.

TRIAL EXAMINER: I don't want somebody later looking for a Bobby Allario and only coming up against an Illario. I know there are errors here. We've got to correct it for subsequent review.

[fol. 230] Q (By Mr. Aronson) Now on this particular day, the 30th, what time of day was this conversation, sir, if you can recall?

A About 3:30 I think. Three or 3:30.
Q Who did the speaking on this day, if you can recall?
A Illario.
Q Did the other gentlemen do any speaking?
A I'm sure there were words said, but what they were I don't remember.
Q Do you remember what Mr. Illario said?
A I do.
TRIAL EXAMINER: What did he say?
THE WITNESS: He gave me three copies of the agreement with 825 and he said that unless Burns & Roe signed an agreement with 825 by 8 o'clock the following morning there would be no Operating Engineers on the job.
MR. ARONSON: Mr. Trial Examiner, I would move to strike that testimony as well inasmuch as it has not been established that Mr. Illario was an agent of Local 825.
TRIAL EXAMINER: Same ruling—motion denied.
Q (By Mr. Aronson) During this conversation isn't it also a fact that you were reminded of the vote that the Engineers had taken on the job?
A No.
Q You weren't told about the vote?
[fol. 231] A No. This was the previous day when I was told of the vote.
Q And isn't it true on this day reference was made back to the vote that was taken on the previous day?
A No.
Q Were you told on the previous day when the vote was taken?
A No.
Q Did you ask?
A No.
Q Now on the following day did you have—I'm sorry. This was on September 30, is that correct?
A Correct.
Q About 3:30 in the afternoon?
A Correct.
Q How long did the conversation last?
A Three or four minutes.

Q And on the following day did you have a conversation with anybody?
A I did.
Q With whom?
A With the same crew, the same gentlemen.
Q And how long did the conversation last?
A About two minutes.
Q And then they left?
[fol. 232] A They left.
Q Where did they go?
A Well, they went outside of the gate to the parking lot where the Operating Engineers were gathered.
Q This would be off of the working property, on the parking lot, is that right?
A It is off of the working property.
Q Is it a parking lot?
A It is a parking lot outside of the working area.
Q Was there anybody else there other than Operating Engineers?
A Other people were coming to work, yes.
Q Now when they left and they walked over to this area, what did you do?
A I went to the front door to see where they were going.
Q And you saw them walk over to this area and stop?
A Yes.
Q Did you hear any conversation that took place?
A I did not.
Q How far a distance is that from where they were to where you were?
A About 100 yards.
Q This was on October 1, is that correct?
A The morning of October 1.
Q And there had been no work stoppage up until this point?
[fol. 233] A No.
Q Anywhere? Anywhere on the jobsite?
A Anywhere on the jobsite, no.
Q Now after these gentlemen left your office and went over to the parking lot area, how long did they speak, or how long was there a meeting there, do you know?
A Just a very few minutes.

Q Then what happened?
A Well, the men began to leave the job—leave the parking lot area.
Q Did Mr. Behrend leave?
A No, he did not leave at that time. And Mr. Bonatz didn't leave at that time.
Q Mr. Gatti and Mr. Illario did?
A I don't know.
Q How do you know those two didn't?
A Because I saw them on the job afterwards.
Q What time?
A I spoke to Mr. Bonatz somewhere between 8 and 9 o'clock and asked him if the Operating Engineers that were standing by the watering pumps were also going to be affected by this and he said they were not.
Q Who was this you spoke to?
A Mr. Bonatz.
Q Was he alone when you spoke to him?
[fol. 234] A I don't remember.
Q Now sometime later in the day the Operating Engineers returned to work, isn't that so?
A They returned to the job, yes.
Q You had a conversation with Mr. Illario that afternoon?
A That's right.
Q Anybody else?
A Mr. Bonatz was with him.
Q Where did this take place?
A In the proximity of the shanty used by the Operating Engineers over in the Poirier-McLane area.
Q This was on October 1 at what time of day?
A Between 1:30 and 2 o'clock I would say. Shortly after they returned to work.
Q No question in your mind that Mr. Bonatz was there?
A No question.
Q No question in your mind that Mr. Illario was there?
A No.
Q No question in your mind? He was there, right?
A You asked—

Q Was he there?
A Where?
Q With you?
TRIAL EXAMINER: With Bonatz, when you spoke to Bonatz.
THE WITNESS: I didn't speak to Bonatz neces-
[fol. 235] sarily. What was the question originally?
Q (By Mr. Aronson) Let me go back. At 1:30 or 2 o'clock in the afternoon on October 1 you had a conversation with Mr. Bonatz and Mr. Illario?
A Right.
Q Who did you speak to?
A I spoke to both of them.
Q There is no question in your mind that they both were there?
TRIAL EXAMINER: He answered this four times.
MR. ARONSON: I'm sorry, Mr. Trial Examiner, I didn't get the answer to Mr. Illario being there as definite.
THE WITNESS: Yes.
Q (By Mr. Aronson) What did you say?
A I asked why the Operating Engineers had returned to the job.
Q Is that all you said?
A I asked that question.
Q Is that all you said?
A I maybe said something afterwards.
Q What else did you say?
A But I don't recall what it was.
Q How long did the conversation among the three of you last?
A It was just a few words. I asked why the Operating Engineers had returned—
[fol. 236] Q I didn't ask you what it was. I just asked you how long it was.
TRIAL EXAMINER: He is answering your questions. Let's stop the quibbling. All right, what did they tell you when you asked them this?
THE WITNESS: Mr. Illario said to me that the Operating Engineers had been instructed by Pete Webber to return to work and that there had been an agreement

reached with Burns & Roe. This ended the conversation.

Q (By Mr. Aronson) Were you aware of any agreement reached with Burns & Roe?

A I was not.

Q The employees went back to work that afternoon, is that right?

A That's right.

Q Bobby Illario worked that afternoon. Did you see him work?

A No.

Q Now, on October 6 did you have any conversation with anybody? Any of these gentlemen?

A Yes.

Q With whom?

A On October 6 Hank Behrend and Bill Bonatz and Bobby Illario came in to my office about four o'clock in the afternoon.

[fol. 237] Q Behrend, Bonatz, and Illario. Are you sure Hank Behrend was there?

A Did I say so?

Q I am just asking you if you are sure he was there?

A Yes.

Q Who spoke?

A Illario.

Q How long did this meeting last?

A Oh, about ten minutes I guess.

Q Now during this meeting Mr. Illario said to you that the employees of 825, the members, were getting restless because they wouldn't work where there was no contract, isn't that right?

A Well, Mr. Illario, the first thing informed me that if an Operating Engineer wasn't put on the welding machine, why we wouldn't have any Operating Engineers on the job the following day.

Q And what did you say?

A And he further said that Burns & Roe doesn't have a contract with 825 and White doesn't have a contract with 825.

Q And what did you say?

A I said Burns & Roe had a national agreement, and as far as the welding machine was concerned it had been

assigned by White to the Ironworkers, and that there wasn't anything that I could do about the assignment. [fol. 238] And at that time I showed them a copy of a communication from Cour of the National Joint Board.

Q What did they say?

A They offered no comment.

Q Didn't Mr. Illario state to you that the Operating Engineers were reluctant to work where sub-contractors didn't have an agreement with 825?

A I think this perhaps is so, since you mention it. I think that when he mentioned the fact that Burns & Roe didn't have a contract, nor did White have a contract, I think that this was perhaps the wording—that the Operating Engineers were reluctant to work for any sub-contractor who didn't—

Q And isn't it also a fact that Mr. Illario and/or Mr. Bonatz—Mr. Behrend was there, too, right—mentioned something about a vote that the employees had taken?

A No.

Q How many times did they mention the vote to you?

A Once.

Q That would be the first occasion?

A The first time.

Q Was there any discussion about the men being restless, the men on the job?

A I don't recall.

MR. ARONSON: Mr. Trial Examiner, I am going to ask you now if you would reconsider your ruling with [fol. 239] respect to the Joint Board inasmuch as we do have the testimony here from the witness about the submission to the Joint Board, on his direct examination, that he was familiar with the submission—in fact the exhibits were introduced through the witness. I don't want to belabor it any more than I have but I believe that the document is relevant to this proceeding and that it should be an exhibit—not a rejected exhibit.

TRIAL EXAMINER: If the Board considers it relevant they will accept it. I won't. I don't consider it relevant. I have given you my reasons. I am not going into the proceedings before the Joint Board, or their validity.

MR. ARONSON: Your Honor, there is some testimony on direct examination of this witness at the prior hearing involving a company called Freehold Electric,

TRIAL EXAMINER: Give me the page.

MR. ARONSON: Page 30. Dealing with conversations this witness allegedly had with representative Ray Shinn of the union and some other individuals—Mr. Illario, Mr. Bonatz, Mr. Behrend. Such testimony is completely irrelevant to this proceeding. There is no allegation in the complaint concerning Freehold.

TRIAL EXAMINER: I didn't understand this testimony when I re-read it.

MR. ARONSON: I would move that it be stricken from the record.

[fol. 240] MR. HANNON: Mr. Trial Examiner, I think I can recall explaining to you at that time because you questioned it at that time.

TRIAL EXAMINER: Now I have forgotten your explanation.

MR. HANNON: Mr. Aronson has been discussing an agency relationship here. This was put in for an agency purpose because here we have a Mr. Ray Shinn, who is an acknowledged business agent and an agent of the Respondent, appearing with these same individuals, as we said before, Illario, Behrend, Bonatz, and he is giving a certain statement to Mr. Willis about the prior problem on the job. We are not interested about Freehold as such, but we are interested concerning the agency situation.

MR. ARONSON: Of whom?

TRIAL EXAMINER: With Local 825.

MR. ARONSON: No. Of which individuals?

MR. HANNON: Local 825's responsibility for the entire—

TRIAL EXAMINER: Bonatz, Illario, and Behrend at least. I don't know about Gatti.

MR. ARONSON: There certainly is an admission with respect to Mr. Bonatz.

TRIAL EXAMINER: Well, there is certainly no admission with respect to Illario or Behrend—or Illario and someone else—because you asked me to strike the testimony.

[fol. 241] MR. ARONSON: I'm aware of that. And this testimony on Freehold has absolutely no materiality, and no weight should be given with respect to—

TRIAL EXAMINER: I see the position of the General Counsel now. And I recall that on another occasion these same men came to visit as representatives of 825, to make another protest about another job—or a prior proceeding—I've forgotten it now.

I will deny the motion. You have your exception.

• • • •

[fol. 242] A I did.

Q Was that your responsibility, sir?

A I felt it was.

Q You felt it was?

A Yes.

Q Could you explain that, sir, as to what was in your mind and why you felt it was?

A Well, because the job had been beleaguered by work stoppages and strikes and so forth and we had a Joint Board decision on the welding machines.

Q And you say "we." Whom do you mean, sir?

A I mean the job—"we" the job—had a decision on the welding machines and in order to try to implement the decision of the National Joint Board without any more confusion and so forth I thought it was a gesture that would perhaps lead to a little peace on the job. I asked the two business agents involved to meet with me to see if we couldn't work out an equitable implementation.

Q You didn't call Mr. Bonatz or Mr. Behrend or Mr. Illario into this, did you?

A I did not.

Q You called the business representative, Mr. Shinn?

A That's right.

Q Did you have any conversation with Mr. Norton from the Ironworkers?

[fol. 243] A I had conversations with Mr. Norton quite regularly.

Q Did you have any conversation with him on the day that you scheduled the meeting?

A Yes.

Q And what was that conversation?
A The meeting that I had attempted to set up didn't take place.
TRIAL EXAMINER: What was your conversation with Norton at that time? At the time you had the conversation with Norton did you know the meeting would not take place?
THE WITNESS: We didn't have any meeting. So when I came out to go to lunch, Mr. Norton was there and we went to lunch together.
Q (By Mr. Aronson) Was Mr. Shinn with you?
A No.
Q Did any representative of Local 825, be it Mr. Shinn, Mr. Webber, a shop steward, a member, a lead engineer, ever demand that you stop doing business with White Construction Co. or with any other company?
A No.
Q As a matter of fact they never threatened to picket your jobsite or anything of that nature, did they, sir?
MR. HANNON: I think that is too broad, anything of that nature.
TRIAL EXAMINER: Restrict or restrain it to picketing.
[fol. 244] Q (By Mr. Aronson) Did they ever threaten to picket the jobsite?
A No.
Q During this period of time you were asked on several occasions by Mr. Illario, Behrend, Bonatz, and other people that you have testified to, that Burns & Roe should sign a contract with 825, isn't that correct?
A That is correct.
Q And 825 had a dispute with you about this, didn't they?
A I beg your pardon?
Q There was a dispute about this?
MR. HANNON: Objection. I think this calls for a legal conclusion.
TRIAL EXAMINER: If I have a dispute with anyone I know it. I don't think it is a legal conclusion. He may answer.

Q (By Mr. Aronson) It was a dispute, was it not?
A It would appear that such was the case, but not with me personally.
Q Well, not personally, but with Burns & Roe?
A That is correct.
MR. ARONSON: I have no further questions.
MR. HANNON: No questions.
MR. APRUZZESE: No questions.
TRIAL EXAMINER: The witness is excused.

(Witness Excused)

* * * *

[fol. 245] ROBERT A. ESCHER

a witness recalled to the stand, being first duly sworn, was examined and testified further as follows:

CROSS EXAMINATION

Q (By Mr. Aronson) Mr. Escher, would you state your full name and address for the record please?
A Robert A. Escher, 17 Duck Pond Road, Demarest, New Jersey.
[fol. 246] Q Mr. Escher, what is your title with White Construction Co.?
A President of the White Construction Co.
Q How long have you been president?
A Since 1960 I think it is.

* * * *

Q (By Mr. Aronson) Mr. Escher, had White Construction Co. ever used a concrete pump prior to this job, the work we are involved with here?
A No, we had not.
Q Were you involved in the assignment of the electric [fol. 247] welding machine, starting and stopping, to the Iron Workers?
A Yes, sir.
Q And was it you who gave instructions to Mr. Gunderson or did you give it to someone else who in turn gave it to Mr. Gunderson?

A Mr. Kylberg and I discussed this at great length and whether he gave it to Mr. Gunderson or whether I did, I don't remember, but—

Q What was Mr. Kylberg's position at the time?

A General Superintendent.

Q Now had you a meeting with Mr. Weber, of Local 825, sometime in September, of 1965, with relation to this job?

A Yes.

Q And where did that meeting take place?

A In Newark.

Q And what date was this?

A I don't remember the date, but it was—

Q Approximately?

A In the middle of September. As a matter of fact —wait a minute—it was—I remember it was now the Friday before Labor Day, so it was early September.

Q And who was there?

A Pete and Bob Kylberg, myself, and Pierson—I think it's—

Q Johnny Pierson?

A Jack Pierson.

[fol. 248] Q Mr. Pierson is a business representative of Local 825, isn't that so?

A Yes, sir.

Q Who called this meeting?

A Weber—Mr. Weber.

Q What was the purpose of it?

A To discuss the job and how we were going to handle it.

Q And was there discussion on the job and how you were going to handle it?

A There certainly was.

Q Was there discussion about the electric welding machine?

A No.

Q Nothing at all?

A Nothing.

Q Was there any discussion as to what would be done on the electric welding machine?

A The electric welding machine, to my best recollection, never was mentioned at that tmeeting.

TRIAL EXAMINER: When did this meeting take place?

THE WITNESS: Early September—just the Friday before Labor Day in September.

TRIAL EXAMINER: And the welding machine was not on the job then?

THE WITNESS: No; we had just started on the job, sir.

[fol. 249] Q (By Mr. Aronson) However, you knew there would be a welding machine on the job, didn't you, sir?

A At that point, the welding on the job was going to be very minor, and there would have been a welding machine on the job, yes.

Q What do you mean "very minor"?

A The amount of welding that we had to do under our contract at that point was very minor amount. It was welding reinforcing rods and things like that.

Q That, by the way, has changed, has it not?

A Very definitely.

Q The welding that is going to be done has increased substantially?

A Substantially.

Q When did that change?

A That changed when the structural steel was delivered.

Q Which was when?

A That started in—well the middle of September.

Q Now when you decided to assign this work to the Iron Workers were there any Iron Workers in the employ of White at the time?

A Yes.

Q And what were they doing?

A They were unloading and erecting structural steel, and unloading reinforcing steel.

[fol. 250] Q And how many employees—iron workers—were there?

A Oh, I don't remember exactly; about eight or ten.

Q Now did you have any discussion with Mr. Norton about this job?

A I forgot to mention—Mr. Norton also attended the meeting in September.

Q Now did you have any discussion with Mr. Norton about the work to be performed on this job?

A Very definitely.

Q When—at this meeting?

A At the September meeting.

Q And there was no mention of a welding machine?

A No.

Q All right. When did you have discussions with Mr. Norton about the job?

A I did not, except for that one meeting with Pete and Pierson, did not have any discussion with Norton—but Bob Kylberg had many discussions with him.

Q You didn't?

A I did not.

Q Do you know when Mr. Kylberg had them?

A On a number of occasions when he went to the job as we were getting organized.

Q And what month would this be? What dates are we talking about?

[fol. 251] A September.

Q Now when you and Mr. Kylberg decided—or when you decided to assign this work to the Iron Workers, what was your assignment based on?

A I had just been through a case in May, on the assignment of welding equipment—which the Joint Board had decided that the assignment to welding equipment—and this was actually a gasoline welding equipment—was the tool of the trade using it.

Q Gas welding equipment was?

A Yes.

Q Continue, please.

A And that was a case on a steamfitter—with the electricians and not the engineers. And the Joint Board again had made other decisions on electric welding equipment—there was a question in my mind whether we use gasoline-driven equipment—whether or not this would be the tool of the trade; or maybe we might have used

an engineer. But from an economic standpoint we were getting free power. Electric equipment had been assigned and had been awarded to the trade that was using it. So that is the basis of our assignment.

Q Do I understand you to say that at the time you made the assignment you didn't know whether you were going to use electric or gas?

A No; no.

[fol. 252] Q When did you determine what kind of power-driven equipment you were going to use?

A When we saw that the electric power was available.

Q And when was that?

A When we got on the job.

Q And when was that—what date?

A September 7th is the day we started on the job.

Q Now, you had not been in touch with Mr. Norton from the day after Labor Day until the 27th of September?

A No, I wasn't even in touch with him on the 27th.

Q I'm saying between those dates you were not in touch with him?

A No.

Q All right. And at no time, then—I'm sorry—strike that.

Had you received any written communications from the Iron Workers—Mr. Norton's local—between those dates?

A No.

Q Had Mr. Norton, or anyone from the Iron Workers, in fact, every claimed the electrical work?

A No, we gave it to them.

Q Did they ever ask for it?

A They never asked me for it.

TRIAL EXAMINER: They didn't ask for it, and he gave it to them.

[fol. 253] MR. ARONSON: He gave it to them.

Q (By Mr. Aronson) Now isn't it a fact that after the 27th of September, when the work was assigned to the electrical (sic) workers, that you were told—either by your representative or by Mr. Norton or by some other

official of the Iron Workers, that the Iron Workers didn't want it?

A No.

Q Mr. Kylberg never told you this?

A No.

Q Now at the time you made the assignment to the Iron Workers was there any conflict as to competing claims from labor organizations as to this work?

MR. HANNON: Objection, your Honor—that seems to be sort of a legal—

TRIAL EXAMINER: I'll permit it.

THE WITNESS: Was there any—

Q (By Mr. Aronson) Were there conflicting claims for the operation of this work at that time?

A The—

TRIAL EXAMINER: The machine?

THE WITNESS: The confliction was that the Engineers claimed that after we made the assignment to the Iron Workers. The Iron Workers did not deny the assignment.

Q (By Mr. Aronson) I am talking, Mr. Escher, prior to the date the assignment was made were there [fol. 254] two unions claiming this work?

A Well not to my knowledge.

Q Now you have a contract with the Iron Workers, do you not?

A Yes.

Q Now that contract doesn't cover electric welding machines, does it?

A Not per se—probably—I don't know

TRIAL EXAMINER: Not specifically, as far as you know?

THE WITNESS: I don't know.

TRIAL EXAMINER: All right—the answer is he doesn't know. To the best of your recollection, it does not cover the operation of electric welding machines—specifically named?

THE WITNESS: That's right.

Q (By Mr. Aronson) At the time you made the assignment, the fact that you had a contract with the Iron

Workers played no part in your assigning this work to the Iron Workers, isn't that so?

A That's so.

Q Now during your conversation with Mr. Weber, in September, in early September, isn't it a fact that Mr. Weber discussed the electric welding machine with you, when you said, "Look, I'm going on vacation, and we'll discuss it when I get back—

A No.

[fol. 255] Q —or we'll discuss it sometime late in November"?

A To my best recollection, there was no discussion in Newark with Mr. Weber, Pierson, and Norton about the electric welding equipment.

Q Now after the assignment was made by your company to the Iron Workers did Mr. Weber or any other representative of the union contact you concerning this work?

A No.

Q As a matter of fact, it was you who called Mr. Weber in December, is that correct?

A That's right.

Q Now during your discussion with Mr. Weber didn't he tell you that he didn't want to speak with you but that he was told to do so only because his attorney told him to do so, right?

A I don't remember him saying that on the telephone when I discussed it with him. That's what he said in court in Trenton.

Q In any event, you don't remember it?

A I don't remember him saying it on the telephone.

Q In any event, during your conversation with Mr. Weber, he never brought up the welding machine, did he? It was you who brought it up?

A In December?

Q Yes.

[fol. 256] A Certainly; I was trying to get the job back.

Q In addition, in December, it was also you who brought up the fact that you had men working in other jobs—

A Exactly.
Q —and you asked him why he supplied you these men?
A That's right.
Q He did not say to you, without your asking him, anything about these other jobs, did he?
A No, that's true.
Q As a matter of fact, Mr. Weber didn't say anything except in response to certain questions that you were asking him, is that correct?

(Witness laughed.)

TRIAL EXAMINER: I can see the witness' dilemma.
THE WITNESS: Repeat the question, please.
Q (By Mr. Aronson) I say, as a matter of fact, Mr. Weber never brought up any of these subject matters in this particular case unless it was in specific response to a question that you asked?
A Well I have had many conversations with Mr. Weber and Mr. Weber will bring up many things-whether they are direct from a question by me, or not, I can't say that's the truth—of course not. We talked for an hour and a-half.
TRIAL EXAMINER: I believe you.
THE WITNESS: Now if he asked me no questions [fol. 257] that I didn't bring up—I mean—that's—I doubt it.
Q (By Mr. Aronson) Well in any event, during the course of the conversation he mentioned certain things to you about other jobs that you were on, as to what might occur at those other jobs?
A That's right.
Q However, nothing ever did occur, did it?
A No.
Q As a matter of fact, you realize that you didn't take him seriously, did you, sir, when he mentioned it?
A I never know whether to take Pete seriously, or not.
Q Why is that?
A I forewarned all of those jobs the next day to look out, that there may be some trouble. Let's put it that way.

Q But there wasn't, was there?
A No, there wasn't.
Q Now do you know whether or not Mr. Kylberg had a conversation with Mr. Weber?
A Yes, he did.
Q Now during the course of your conversation with Mr. Weber—strike that.
During the conversation—strike that.
During the course of your conversation with Mr. Weber there was some metnion about the concrete pumps, isn't that so?
[fol. 258] A Yes.
Q Mr. Weber indicated to you that it was the union's position that there should be more than one man on this pump, isn't that so?
A Yes.
Q And he said that it was up to the men as to how many people should be on this pump?
A That's what he said.
Q Am I correct?
A That's what he said.
Q Now didn't he also say to you that the problem out there at the moment was the pump?
A Well—
Q And the contract?
A This is what he said, yes. The contract was the main thing.
Q That was the main thing?
A That's right.
Q He didn't say to you, in this conversation, that "my men aren't working because of the electric welding machine, did he"?
A No, he didn't; I did.
Q You said it; but he never did?
A No.
TRIAL EXAMINER: Did he agree with you?
[fol. 259] THE WITNESS: I put it to him—I said, "Pete, if I put gas welding equipment on that job, will you put the men back to work?" He said, "Yes, if you sign a contract." Not once, but three or four times—because I asked the question—

MR. ARONSON: Three or four times.
THE WITNESS: —three or four times.
TRIAL EXAMINER: There is no misunderstanding; the record is very clear on that.
MR. ARONSON: I don't understand your statement, Mr. Trial Examiner.
TRIAL EXAMINER: He said that "Pete repeated that three or four times to us." So I said the record is very clear as to what Pete told him. What I meant by that statement is there is no ambiguity here.
Q (By Mr. Aronson) Did you mention, sir, that you would put more men on the concrete pump?
A No, I told him I wouldn't.
Q Did you tell him why?
A Because of the information that we had from all over the country, from pump manufacturers, from contractors that had used it, there was no need for anymore men than one man—or anymore than one man.
Q The information you had from where?
A From pump manufacturers, from contractors who had used the pumps, all over the country. And we have [fol. 260] affidavits, I think, that are in the records from the—from those people—stating that one man was used, and in many cases, no Engineers.
Q Who had made that check?
A We had.
Q When?
A Before we put the pump on the job.
Q When you say "we" who do you mean, sir?
A White Construction Company.
Q Who—which individual?
A Myself, Bob Kylberg, Arthur Olson, Ed O'Reilly; all of us.
Q Had you ever contacted any heavy construction companies concerning this pump?
A Yes.
Q You, personally?
A No, not any heavy—I did not contact any heavy construction company, per se.
Q Who did, do you know?

A I think Ed O'Reilly talked to the Long Island Heavy Construction Company.

Q Now for the period from November 8th, 1965, to November 15th, 1965, when the pumps started operation, there was no difficulty on this job site, was there, sir?

A Yes, there was.

Q Oh—what happened?

[fol. 261] A When we put the electric welding equipment—

Q November 8th, 1965—

A November 8th—that's the day we started, the start of the electric welding machine.

Q November 8th?

A On November 8th.

Q Isn't that the day you obtained a District Court injunction, sir?

A Well then it was November 9th. It was in that—I do not recall the exact date—but between November 8th and the 15th there was trouble.

Q Let me rephrase my question, sir. Between the date the District Court injunction was obtained and November 15th, was there trouble on the job?

A Yes.

Q What date, and tell me what happened?

A The Engineers walked off.

Q When was this?

A Well—

Q Isn't it a fact, Mr. Escher, that the electric welding machine was started prior to the obtaining of the District Court injunction, by consent?

A It was an Armistice Day there—which was the 11th—which was a holiday; and the 10th, the Engineers were not on the job; the 9th, they were not on the [fol. 262] job; and I think the 12th they were not on the job.

Q Of November?

A November. Now those dates—I may be mixed up on those dates—

Q I think you are considerably, sir. Would it refresh your recollection to state that the electric welding machine started on November 4th? The District Court in-

junction was obtained November 8th; that on November 15th, the concrete pump was started?

A November 15th, I remember that date.

Q It's your testimony that between the 8th and November 15th there was trouble on the job?

A Well as I say, I'm getting hazy on these dates; it's been so long ago—but I thought it was the Armistice Day—two days before Armistice Day and one day after—that there was a strike. I mean the record will show—

TRIAL EXAMINER: As I would say, there must be some way of establishing these dates beside the questions for ten minutes on them. The dates must be fixed somewhere.

MR. APRUZZESE: Well the 8th was the date of the District Court injunction, your Honor; the 11th was Armistice Day—there wasn't any work on the job.

TRIAL EXAMINER: Right.

MR. APRUZZESE: On the 9th—I don't know whether you want this on the record, or not—we can stipulate [fol. 263] this, I'm sure, Earl. On the 9th, nobody worked at all. The argument was well, they just got finished in court late on Monday—we didn't know where they were—so the job didn't work on the 9th. On the 10th, they were trying to round people up and somebody had to go to see a doctor, or someone—so the Engineers didn't really work until the 10th. The 11th was a holiday. Then you go to 12th, 13th—the 14th was a Monday. We got the pump on the job and that started a problem—and the 15th, there weren't any men. So we had very little work after the injunction.

Q (By Mr. Aronson) Well I just want to refer to your testimony, Mr. Escher, in the District Court. Maybe this will refresh your recollection—where you were asked a question by Judge Lane—

MR. APRUZZESE: What page are you on, Earl?

MR. ARONSON: Page 84 and 85.

Q (By Mr. Aronson) (continuing) Where the judge asked you—I'm paraphrasing—I'm not quoting in the entirety—of November 8th, 1965 and Monday, November 15th, when the pump first arrived on the site, "did you have any difficulties with the Engineers?" Now

you answered that question: "No, sir, no, your Honor; they were working on the two cranes that we had on the job." Now does that refresh your recollection, sir, as to what happened between the 8th of November and the 15th of November? If you want, I'll show you the testimony.

[fol. 264] A Yes, let me see it.

MR. ARONSON: Let the record show that I'm showing the witness—this would be Charging Party Exhibit—

MR. APRUZZESE: 1.

MR. ARONSON: —1—this portion of the testimony in the District Court proceeding at page 84 and 85.

(The exhibit was handed to the witness.)

THE WITNESS: Well I did testify here that there was no stoppage but—

Q (By Mr. Aronson) That's what I asked you, sir.

A Yes.

Q Now Mr. Apruzzese stated that November 9th and 10th and certain other dates there was no work, and asked me to stipulate to it. I can't, because it's been indicated to me that your payroll records will show—and I don't know if they will or not—but if they were brought in, I would certainly stipulate to them—that there was continuous work from November 9th to November 17th, but for a holiday. Now are you familiar with your payroll records, sir?

A Yes.

Q And will your payroll records show that there was work from November 9th to November 17th?

A I would have to check that.

Q So that you don't know whether there was any work stoppage on November 9th, 10th, 11th or any other dates—

[fol. 265] MR. APRUZZESE: I didn't say there was a stoppage. I said that—

TRIAL EXAMINER: It was difficult getting the men—

MR. APRUZZESE: Yes.

TRIAL EXAMINER: —rounded up.

MR. APRUZZESE: The injunction ended on the 8th. There was no work on the 9th; on the 10th one of the

fellows that was working on the crane had business in Newark so he didn't work; the 11th was a holiday. They worked on the 12th. Then you had the 13th and 14th were Saturday and Sunday, they didn't work. On the 15th, that's when the concrete pump came on the job and then it hit the fan again.

MR. HANNON: I think you'll find during that period of time, too, when the fellow was up in Newark, that I think Bill Bonatz turned in sick one morning.

MR. APRUZZESE: Right.

MR. ARONSON: This may very well be.

Q (By Mr. Aronson) But will your payroll records show that there were Operating Engineers employed on everyday from the 9th to the 17th?

TRIAL EXAMINER: He said he'd have to check his records.

MR. ARONSON: Fine—because I have statements from counsel which I can't stipulate to as being a fact.

TRIAL EXAMINER: But he hasn't got his records with him.

[fol. 266] MR. ARONSON: Well then the statements are meaningless to me.

THE WITNESS: I can get the statements, if you want them.

Q (By Mr. Aronson) Now I think you gave testimony that you used the Joint Board before and you're bound by it, is that right?

A Yes, sir.

Q Now I know that this matter was submitted to the Joint Board by Burns & Roe and not by you, is that correct?

A That was brought into evidence this afternoon.

Q That's correct, isn't it?

A Yes.

Q Yet, as a matter of fact, this pump problem, when did you submit that to the Joint Board?

A Immediately after the Engineers walked off on the 17th.

TRIAL EXAMINER: Of November?

THE WITNESS: Of November.

Q (By Mr. Aronson) November 17th?

A I think so. We may have submitted it before but I think that was immediately thereafter. I don't remember those dates. That certainly is in the record.

Q Isn't it a fact that this was submitted by you to the Joint Board much later than the 17th, sir?

TRIAL EXAMINER: Now you've indicated it wasn't [fol. 267] submitted by him to the Joint Board.

MR. ARONSON: I'm talking about the jump machine.

MR. APRUZZESE: Now he's talking about the pump machine.

TRIAL EXAMINER: Oh, I'm sorry.

THE WITNESS: Well this, as I say, I don't remember the dates—

TRIAL EXAMINER: Are we arguing about dates when they are in the exhibits?

MR. ARONSON: No, sir.

MR. APRUZZESE: We don't have any exhibits yet on the concrete pump. We will, if you want to stipulate them.

MR. ARONSON: Well if you have the date—

MR. APRUZZESE: I have all the dates here.

MR. ARONSON: —on the concrete pump, I'll stipulate it if you have them.

MR. APRUZZESE: Yes—I have the documents, too.

MR. ARONSON: If you tell me the date it was submitted I'll stipulate to it.

MR. HANNON: Could we conclude with the witness —continue with the witness—and then—

TRIAL EXAMINER: Yes, while he's examining the papers, continue with the witness.

MR. ARONSON: Well my next line of questioning is relevant to this, Mr. Trial Examiner.

(Mr. Apruzzese proceeded to check his records.)

[fol. 268] MR. APRUZZESE: This is January the 6th, to the Joint Board.

MR. ARONSON: All right.

MR. APRUZZESE: January the 6th. I have a copy of it, and I have the decision and the subsequent decision. Do you want them, Earl?

MR. ARONSON: No, I just want the date; that's all.

Q (By Mr. Aronson) So that you submitted the concrete pump dispute to the Joint Board approximately a month and a-half after the dispute arose, is that right?

A Yes.

Q Yet this electric welding machine was submitted immediately, not even by you, is that right—when there was no conflicting claim?

A That's right.

MR. APRUZZESE: Wait a minute—hold it—I object to that part of the question where he says "there was no conflicting claim." I object to that—

TRIAL EXAMINER: Well there had been an assignment made at the time—

MR. APRUZZESE: That's right.

TRIAL EXAMINER: —that Local 825 claimed the work.

MR. APRUZZESE: It's a conflicting claim, as far as we're concerned. I object to that phraseology.

Q (By Mr. Aronson) Well anyway it was admitted [fol. 269] by Burns & Roe at a much earlier time, is that correct?

A Right.

Q Before there was a dispute by two unions for the work?

A Yes.

Q All right. Now isn't a fact—

MR. APRUZZESE: I object to that too,—"before there was a dispute." There's no evidence to that.

MR. ARONSON: There's no evidence there was a dispute.

MR. APRUZZESE: Well that's a conclusion.

TRIAL EXAMINER: Let's proceed.

Q (By Mr. Aronson) All right. Mr. Escher—

TRIAL EXAMINER: Certainly 825 had a claim; it was in dispute with the assignment. If it wasn't, it wouldn't have gone to the Joint Board, at all. Nobody would have gone to them.

MR. ARONSON: Well Mr. Trial Examiner, that's assuming an awful lot of facts.

TRIAL EXAMINER: All right—well go on with the questioning. I don't want to argue about the briefing parts of this issue here.

Q (By Mr. Aronson) Isn't it a fact, Mr. Escher, that it was Burns & Roe who told you to make the assignment to the Iron Workers and not to the Engineers for the simple reason that you knew there was going to be welding machines on this job and you wanted a test case, and you wanted to box Local 825 in—and [fol. 270] your telephone call was further entrapment or attempt, isn't that so?

A No, sir.

Q Now will you tell me what Burns & Roe told you to do, if anything, with respect to the assignment of the electric welding machine?

A Burns & Roe didn't tell us anything to do.

Q Did they suggest something to you?

A We sat down with Burns & Roe and we said we looked—because this was all over the job—that there was going to be a dispute; there's going to be a problem. Now after all, we were subcontractors to Burns & Roe, and we don't go off halfcocked and do things without telling them what we're going to do. We sat down with Burns & Roe—

Q When was this?

A In September.

Q Prior to September 27th?

A Prior to September 27th.

Q All right.

A And we sat down with Burns & Roe in my office in New York City, and we went over—

Q Who was there for Burns & Roe?

A Mr. Jack Garvin, who at that time was their labor relations consultant—and we went over all of the green book decisions; we went over our prior decision in May [fol. 271] or June, of '65; and it was agreed at that time that we would make the assignment to the Iron Workers. And they concurred with our decision. But they did not tell us to make this assignment.

Q Now we're playing with words. They suggested it to you?

A No, they didn't suggest it to us.

* * * *

[fol. 273] REDIRECT EXAMINATION

Q (By Mr. Apruzzese) Mr. Escher, you have testi-
[fol. 274] fied that with regard to the concrete pump machine, Mr. Weber said that the men voted that two extra Engineers were needed and therefore three men were required on this machine—isn't that so?

A Yes, sir.

Q And had there been a request at the job for three Operating Engineers on the concrete pump and the line that is connected to it?

A Had there been a request?

Q Yes.

A No.

Q Well wasn't there a—

A Wait a minute—

Q —request at the job site?

A Yes.

MR. ARONSON: I object. He's leading the witness. The witness testified there wasn't; now he asks him "wasn't there?"

TRIAL EXAMINER: What was the question? Repeat the question.

MR. APRUZZESE: The question is: Was there a request at the job site by the Operating Engineers Union for a number of men on the concrete pump machine?

THE WITNESS: Yes.

Q (By Mr. Apruzzese) All right. Now how many men did they request that there should be placed on the concrete pump machine?

[fol. 275] A At first, they wanted—we understood that we would have one, which would be Bodine; and then the next day Illario came down and said, "Put two more men on the pump, and myself."

Q I see. So that would have been at least three—

A Yes.

Q —is that not correct?

A Yes.

Q All right. Now, to whom had the work of assembling, connecting, disconnecting, cleaning, removing the line connected to the pump been assigned by your company at the job site?

A The laborers—to the laborers.

Q To the laborers, right. And did the Engineers claim that particular work that had been assigned to the laborers?

A Yes.

* * * *

[fol. 286] MR. ARONSON: Right.

TRIAL EXAMINER: Where the Board will determine, by past practice, who should get the work. I don't know the purpose. I'm going to permit it. Let's proceed.

MR. APRUZZESE: Well then just one other point, Mr. Funke—it would seem to me if that's not the purpose, then it would seem to me the line of inquiry would only depend upon what happened at this job site, rather than other job sites.

TRIAL EXAMINER: I'll permit the background. Let's proceed. Go ahead.

MR. ARONSON: Was there an answer to the last question? I believe the witness answered it.

TRIAL EXAMINER: There was.

MR. ARONSON: I believe there was, but would you read it back, Mr. Reporter, to see if it was?

TRIAL EXAMINER: Do you remember the last question. Ask it again, to get the answer. It will be quicker.

Q (By Mr. Aronson) I believe the last question was: Have you—

TRIAL EXAMINER: In the past—

Q (continuing) —in the past ever performed the work of starting and stopping this electric welding machine?

A No.

TRIAL EXAMINER: It was at this job site that you [fol. 287] first performed this task?

THE WITNESS: Yes.

Q (By Mr. Aronson) Now on the jobs that you have worked in the past, with an electric welding machine, who has performed—

A There's always been an Engineer—

Q —the starting and stopping?

A Yes.

Q Pardon?
A There's always been an Engineer starting and stopping.
TRIAL EXAMINER: When we say "an Engineer," we mean a member of Local 825—
THE WITNESS: Yes.
TRIAL EXAMINER: —of the Operating Engineers?
THE WITNESS: Yes, Operating Engineers.
Q (By Mr. Aronson) On any jobs that you have worked on in the past where an Operating Engineer has performed the work of starting and stopping an electric welding machine, to your knowledge, has Local 350 ever claimed this work as belonging to them?
MR. HANNON: I'd object—
THE WITNESS: No.
MR. HANNON: —again, your Honor.
TRIAL EXAMINER: Well I don't know that Local 350 claimed the work on this job. It was assigned to them. I don't know that the claim makes any differ-
[fol. 288] ence. Worked was assigned to them by the employer. But the question has been answered, let's proceed. This is my understanding—the employer has the right to assign work.
MR. APRUZZESE: Well Mr. Funke, in answer to your observation—
TRIAL EXAMINER: I don't know; I can't rely on this record now—on my memory of the record. I'm sure I can rely on the record—I hope—not on my memory of the record.
MR. ARONSON: Well if I may say, the purpose of my question is for this—and I think you should know at this point—that notwithstanding the fact that the employer has assigned the work to the Iron Workers, it is the respondent's contention that at no time was there a conflicting claim for this work, and that the mere assignment to the Iron Workers does not raise a jurisdictional dispute when another union claims the work.
TRIAL EXAMINER: I might not agree with you on the matter of law, but I'll certainly wait until I examine cases before I reach any decision on that point.

MR. ARONSON: If the Trial Examiner would desire, I could refer him to some now.

TRIAL EXAMINER: No, I don't want that now. What I want to do now is finish getting the evidence into the record, as quickly as we can

[fol. 289] MR. ARONSON: Did you sustain or overrule the last objection, sir?

TRIAL EXAMINER: I overruled the last objection. I said that I didn't see that it was relevant, in my opinion, but I'm permitting a great deal—not a great deal—but certainly some testimony in this case which I consider admissible, which I do not now think I will rely upon in reaching a decision. But I want it in the record.

Q (By Mr. Aronson) Now on this particular job—

TRIAL EXAMINER: It might be wrong—

Q (By Mr. Aronson) (continuing) —the Forked River job, prior to the date that the work was assigned to the Iron Workers, to your knowledge, sir, did the Iron Workers ever make a claim for this work?

MR. HANNON: Objection.

MR. APRUZZESE: Objection.

MR. HANNON: He hasn't—

TRIAL EXAMINER: Same ruling.

MR. HANNON: But he hasn't established that this fellow knows when the award was made.

MR. ARONSON: I said to his knowledge.

TRIAL EXAMINER: To his knowledge—that was correct. Do you know?

THE WITNESS: Would you ask me the question again, please?

* * * *

[fol. 309] EDMUND W. SMITH

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: You'll be seated, and give your name and address to the reporter, please.

THE WITNESS: My name is Edmund W. Smith, 4108 Filbert Avenue, Atlantic City, New Jersey.

DIRECT EXAMINATION

[fol. 303] Q (By Mr. Aronson) Now Mr. Smith, if you cannot hear any questions that are asked, please tell us.

A Right.

Q And if you don't understand any questions that are asked by anybody here, will you please tell us.

A Yes.

Q Mr. Smith, are you a member of any labor organization?

A Yes, I am—the Iron Workers.

Q Is that Local 350?

A Yes, Local 350.

Q Speak up, sir.

A Local 350.

Q And how long have you been a member of Local 350?

A Seventeen years.

Q Are you also an official of Local 350?

A Yes, I am.

Q And what title do you hold?

A The president.

Q And how long have you been president?

A Since just about a year.

Q About a year?

A About a year, yes.

Q Now, are you presently employed?

A Yes, I am.

Q By whom?

[fol. 304] A White Construction Company.

Q At the Forked River Oyster Project?

A Yes, sir.

Q And how long have you been so employed?

A Since September.

Q Of 1965?

A Yes.

Q And in what capacity are you employed there?

A I'm the general foreman of the Iron Workers.

Q When you say "general foreman of the Iron Workers," what does that mean? What are your responsibilities?

A Well, in other words, we have—after two foremen on the job—we have a general foreman, and I am the general foreman.

Q As general foreman what do you do?

A Well I take care of everything; I place the men and what they want to do and how they want to do it.

Q Is there a shop steward of the Iron Workers on the job?

A Yes, there is.

Q Is there one?

A Yes, sir.

Q Is he under your supervision?

A Yes, sir.

Q Now do you remember, sir, when the electric weld- [fol. 305] ing machine was first started by—strike that. Have you ever worked on other jobs where there have been electric welding machines?

A Yes, sir.

Q And would you say—how many of these jobs in the past years that you've been a member of the Iron Workers?

A Well I'd say—I couldn't—well quite a few of them; I don't know exactly how many.

Q Many—very many, though?

A Oh, yes, yes.

Q More than ten?

A I would say that, yes. I couldn't count them.

Q Now in the time that you've been a member and an officer of Local 350, to your knowledge, has a member of the Iron Workers ever started an electric welding machine?

MR. APRUZZESE: Objection—for the same reason.

TRIAL EXAMINER: I understand that, yes—you may have an objection to this entire line of questioning—

MR. APRUZZESE: Thank you, your Honor.

TRIAL EXAMINER: —as to the practice in the trade, with respect to the welding machines.

MR. APRUZZESE: Thank you.

TRIAL EXAMINER: I'm going to permit it. As I stated before, I don't know what testimony the review-

ing authority may want in the record—so I'm giving a great deal of leniency to it, in accepting testimony.

[fol. 306] Q (By Mr. Aronson) Have you ever had an Iron Worker perform the starting and stopping of electric welding machines on other jobs?

A No, sir.

Q To your knowledge, sir—at least since you've been president of Local 350—on other jobs than the Oyster Project—has Local 350 ever claimed that the starting and stopping of electric welding machines belonged to its members?

A No, sir.

Q Now on the Oyster Project that we are presently involved with, did you, as president of Local 350, at anytime, claim that the starting and stopping of the electric welding machine at the site belonged to members of Local 350?

MR. APRUZZESE: Objection. Excuse me—could we have the question reread, your Honor?

TRIAL EXAMINER: Read the question back, please.

(Question read.)

TRIAL EXAMINER: This goes with your standing objection, Mr. Apruzzese—

MR. APRUZZESE: Right.

TRIAL EXAMINER: —and also the General Counsel, I assume, is joining this standing objection.

MR. HANNON: Yes.

Q (By Mr. Aronson) Sir—

A No.

[fol. 307] Q —do you understand the question?

A Yes, I understand the question.

Q You may answer it.

A No.

Q Now prior to the day that Mr. Dabundo started the electric welding machine for the first time, do you know, sir, whether the electric welding machine was in operation, prior to the day that Mr. Dabundo first started it?

A Yes, it was.

Q And do you know who started that machine?

A Yes, the Operating Engineers.
Q Did you make any objection?
A No, sir.
Q Did your shop steward make any objection to you?
A No, sir.
Q Did you say anything to White Construction Company about this?
A No, sir.
Q Now did you, at anytime, see Operating Engineers surround the electric welding machine, thereby making it impossible for anyone to work it?
A No, sir.
Q Did you, at any time, see Operating Engineers surround the electric welding machine?
A No, sir—no, I didn't see it.
[fol. 308] TRIAL EXAMINER: In the course of your duties on this job is this machine within your view at all times on everyday?
THE WITNESS: No, sir, not at all times.
Q (By Mr. Aronson) Well how often would the machine be within your view?
A I would have to pass the machine going into the job site from my office, to see the machine.
Q Well during the course of a day how many times would you see the machine?
A Oh, maybe five, six times.
Q At various times throughout the day?
A Right—I'd have to pass the machine.
Q When you say "pass it," you mean walk by it?
A Walk by it.
Q How far away would you be from it?
A Oh, twenty-five feet, thirty feet.
Q Within viewing distance?
A Right.
Q On any of these occasions that you passed this machine, at anytime, have you seen any Operating Engineers surrounding it?
A No, sir.
Q Now on the five or six times a day that you passed the machine—is there any set pattern of time that you would walk by the machine?

[fol. 309] A No, sir.

Q Would you, for example, walk by the machine maybe five times in the morning but never in the afternoon?

A It's possible.

Q Is it also possible that you might walk by at various times during the day? There's no set pattern?

A I have no set pattern, at all.

Q All right. Let me call your attention to the first day that the Iron Workers, Mr. Dabundo, started the electric welding machine. Do you remember when you passed the machine on that day?

A No, sir.

Q Do you remember how many times you passed the machine that day?

A No, sir, I couldn't tell you.

Q Are there days when you pass the machine more than five times?

A Yes—that's very possible.

Q Are there days when you pass the machine less than five times?

A It's very possible.

Q Do you remember, sir, how many times you passed the machine on the first day that Mr. Dabundo started it?

A I'd say about five times.

* * * *

[fol. 315] HENRY J. BEHREND

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: You'll be seated and give your name and address to the reporter.

THE WITNESS: Henry J. Behrend, 6 Lowell Place, [fol. 316] Somerset, New Jersey.

DIRECT EXAMINATION

Q (By Mr. Aronson) Mr. Behrend, are you a member of a labor organization?

A I am.

Q Which one, sir?
A Local 825, the International Operating Engineers.
Q And how long have you been a member?
A Twenty-four years.
Q Pardon?
A Twenty-four years.
Q Have you at anytime been an officer of Local 825?
A No.
Q Have you at anytime been a business agent or a business representative of Local 825?
A No.
Q Mr. Behrend, have you been employed at the Forked River Oyster Project site?
A I have.
Q And are you presently employed there?
A I am.
Q By whom?
A Poirier-McLane Corporation.
Q And how long have you been employed by Poirier-McLane Corporation at this site?
[fol. 317] A From approximately April 24th, 1965.
Q Now what position—strike that. What is your job with Poirier-McLane?
A I am the lead engineer in the employ of Poirier-McLane.
Q Now would you explain what a lead engineer is?
A A lead engineer is a member of Local 825, that is employed by the contractor to supervise all of the repairs of the equipment, to keep—be aware of the safety factor of the job, and to assist the superintendent in anyway that he may deem—or may require you to.
Q Now, to your knowledge, sir, is there any requirement that a certain number of men must be employed by an employer pursuant to Local 825's contracts, in order that for there to be a lead engineer on the job?
A Yes.
Q How many men is that?
A Five or more.
Q And how many men are employed by Poirier-McLane?
A Eighteen at the present time.

Q These would be eighteen Operating Engineers?
A That's true.
Q Are you a steward, sir?
A No, I'm not.
Q Well will you tell us what the difference is, if any, between a lead engineer and a steward?
[fol. 318] A A shop steward is a member of Local 825, employed on the job site, that has been appointed by the union to act as their representative on the job for grievances, and so forth.
TRIAL EXAMINER: He polices the contract?
THE WITNESS: That's right.
TRIAL EXAMINER: On the job site?
THE WITNESS: That's right.
Q (By Mr. Aronson) Is it your job to police the contract on the site?
A No, it's not.
Q Do you file grievances?
A Do I file grievances?
Q Yes.
A No.
Q Now, if an employer needs more men who would he communicate this to?
A If the employer needs more men, he would usually communicate it to me and I would communicate it to the shop steward to contact the hall—unless the shop steward wasn't available, then I have been known to make calls to the hall to request men for the contract. But normally it goes through the shop steward's hands.
Q Now when you say you call the hall, does the employer tell you how many men he needs?
A He does.
[fol. 319] Q Then you would call and say send whatever the amount is?
A Yes.
Q Now on this particular job, did the shop steward—who was the shop steward on the job?
A Bill Bonatz.
Q Is he still the shop steward?
A No, he's not.

Q Who is the shop steward?
A Jimmy Cherry.
Q And do you know when the change occurred?
A Sometime in December—the latter part of December or early January.
Q When Mr. Bonatz was the shop steward, was he employed by Poirier-McLane?
A No, he was not.
TRIAL EXAMINER: Who is he working for?
THE WITNESS: He was working for Chicago Bridge and Iron—another contractor on the job site.
Q (By Mr. Aronson) So that there was no shop steward working for Poirier-McLane, of Local 825?
A No.
TRIAL EXAMINER: Well did he act as shop steward for the men—for the engineers employed by Poirier & McLane, as well as the ones employed by Chicago?
THE WITNESS: Yes, he did.
[fol. 320] Q (By Mr. Aronson) Is it true then, sir, that the shop steward acts as shop steward for all the Engineers on the whole site?
A That's right.
Q It's not limited then to the employer for whom he works?
A No.
Q Is there more than one shop steward at one time on this site?
A No, there's not.
Q As lead engineer are you paid by the union to perform any duties?
A No, I'm not.
Q As lead engineer do you have any responsibility to contact the union in anyway concerning the job?
A I have no responsibility to contact the union regarding the job. That's the steward's job.
Q Now how long have you been a lead engineer?
A Since 1950; this is my sixteenth year as a lead engineer.
TRIAL EXAMINER: With the same company?
THE WITNESS: No.

Q (By Mr. Aronson) In other words, every job that you go to work on, you're a lead engineer, is that right?

A Not every job that I go on; every job that I am assigned as a lead engineer. I have had other jobs in between where I have not been a lead engineer.

[fol. 321] Q Would that be when there are less than five men?

A And sometimes when there are more than five men and I have worked under another lead engineer.

Q I see; I see. Now to get to be a lead engineer so that you are assigned to jobs as a lead engineer, on occasion, is there any requirement—what is the standard that is used, if any?

A Well the lead engineer is usually picked for his mechanical ability and his common sense in being able to protect the contractor's rights and equipment on the job. He's not put out there to be a burden to the contractor; he's out there to be an asset to him.

TRIAL EXAMINER: Who appoints you?

THE WITNESS: The union official.

Q (By Mr. Aronson) So that whether you're going to be a lead engineer on the job or whether someone else is going to be a lead engineer on the job, depends upon the appointment that is made?

A That's right.

Q Now do you know how these appointments are made? Is there any list kept, of seniority, or anything of this nature?

A I don't know.

Q Now—

A We do work from a referral list, and I would assume that when I go out as a lead engineer, that it's my turn to go out.

[fol. 322] Q When you go out as an employee, rather than as a lead engineer, is it from a referral list?

A Yes, it is.

Q Now this referral list, how is that kept? Let's say you're laid off as of today—

MR. APRUZZESE: Your Honor, I would like to object. It seems to me that we're far afield here. I don't see what this has to do with this job.

TRIAL EXAMINER: I don't see what the referral list has to do with it.

MR. ARONSON: Well—

TRIAL EXAMINER: Sometimes he's sent out as an Engineer; sometimes he's sent out as—

MR. APRUZZESE: And the man has testified that he's picked as a lead engineer by the union, so what—

TRIAL EXAMINER: Yes.

MR. APRUZZESE: —what's the difference?

TRIAL EXAMINER: I don't see any difference, and I don't—he says he—his number comes up on the referral list—that's all I need to know.

MR. ARONSON: I'll withdraw the question.

TRIAL EXAMINER: All right.

Q (By Mr. Aronson) Now on September 29th, 1965, did you have occasion to speak with Mr. Willis, of Burns & Roe?

A The date, I'm not sure of, but I did speak to Mr. [fol. 323] Willis sometime in that particular area.

Q And was anybody with you, if you remember?

A I believe Bill Bonatz was with me.

Q Now was Mr. Bonatz the shop steward at that time?

A Yes, he was.

Q Now prior to the time you spoke to Mr. Willis, did you have occasion to speak to—strike that.

On or about this date, do you know how many Operating Engineers were employed at the entire site?

A Approximately thirty-five.

Q Now prior to the time that you and Mr. Bonatz spoke to Mr. Willis, did you have occasion to have conversation with these thirty-five Operating Engineers?

A I have had conversations at various times with these thirty-five Operating Engineers. I don't know what the particular incident you're talking about is at the moment.

Q Did you have occasion at anytime to have a conversation with these thirty-five Operating Engineers, as a group?

A At one time, they collected as a group, and they were indignant over an assignment that was being made

about a welding machine, and they—everybody got together at lunchtime and there was a lot of conversation going on, and there was a vote taken.

Q Now when this vote took place, was this before or after you spoke to Mr. Willis?

[fol. 324] A This was before I spoke to Mr. Willis.

Q Now would you tell us what the vote was?

A To a man every Engineer on the job, including myself, was resentful of the fact that the—that Burns & Roe and White Construction Company were doing something that was different from any of the past practices of our contract or from any of the terms of our contract, and the men felt as though the conditions of their contract were being broken down, and they were all of an opinion that they didn't like the setup at all, and they actually didn't feel as though they wanted to work on the job, under those conditions.

Q Now you mentioned a vote. What kind of a vote was taken?

A Well every man got together and talked it over and there was a lot of going-on in the shanty, and I said, "Now wait a minute—do you fellows know what you want?" And every man said, "Yes." And every man—well I said to them, "Pick out one as a spokesman." So one of the fellows said, "Well you're the master mechanic, you control the floor." So I said, "Well what do you want to do?" And again it was—there was a big shout—"We want to get out of here." So I said, "What do you want to do, walk out—do you want to vote on it or what do you want to do?" "Well we'll vote on it." And every man—it was a unanimous vote, polling each man individually, they all voted the same thing, that they [fol. 325] were dissatisfied with what was going on on the job, so far as the contract was concerned.

Q Now what were they dissatisfied about?

A The assignment of the electric welding machines to the Iron Workers. This might be something—in the conversation, everybody was also throwing up the fact at me that it was common knowledge that the Iron Workers didn't want the assignment. I don't know if this means anything, or not.

Q Now had you, prior to this vote, spoken to any official of the union about taking a vote? Did you suggest this?

A I spoke to no official of the union.

Q Did any official of the union know that this was—that this vote was taken?

A They definitely did not.

Q Now after the vote was taken—you testified that you thereafter had a conversation with Mr. Willis, am I correct, sir?

A That's right.

Q Now what was said at this conversation and who said it?

TRIAL EXAMINER: This was on the 29th, right—the first conversation, when he and Bonatz went to see Willis, is that correct?

MR. ARONSON: He doesn't remember the date but I'm saying on or about the 29th.

[fol. 326] TRIAL EXAMINER: Well it's the first conversation, in any event.

MR. ARONSON: Mr. Willis, I believe, so testified.

THE WITNESS: I think that I did the talking. I think that I brought up a fact that having been on the job for other contractors from October, of 1964, that I had been led to believe by him and other people that they were not the general contractors of the job up until this date; I think that he had always told me that we dealt individually with each sub-contractor and that they were strictly the engineering firm for the project for General Electric. I asked him if that were the case why he was getting involved as declaring himself the general contractor and trying to dictate—to rewrite our contract; and when he didn't have a contract with us. At that time he informed me that he would led it be known as of now that he was the general contractor on the job.

Q (By Mr. Aronson) Did you or did Mr. Bonatz say to Mr. Willis that the men had voted to strike or to walk off the job after a certain date unless Burns & Roe signed a contract?

A Mr. Willis was thus informed by one of us. I believe it could have been me.

Q And what did Mr. Willis say when you told him that the men had taken a vote?

[fol. 327] A I don't remember his comment at that particular time.

Q Now Mr. Willis—well was there any further conversation?

A Not that I know of.

Q Well what did Mr. Willis say about the contract, if anything?

A He said he would look into it.

Q Now the following day, Mr. Willis has testified that he was given—I believe he said the following day—copies of a contract.

TRIAL EXAMINER: Three copies, wasn't it?

MR. ARONSON: Three copies.

Q (By Mr. Aronson) Were you there when he was given these contracts?

A Yes, I was.

Q And who else was there?

A I believe Bobby Illario, Bill Bonatz, and Joe Gatti.

Q Now, from the time that you spoke with Mr. Willis, the day before, until the time that you met with Mr. Willis the following day, did you have any conversations with any representatives of Local 825?

A No, I did not.

Q Now at this meeting with Mr. Willis, who spoke, if you remember?

A The second meeting?

Q Yes, sir.

[fol. 328] A I know it wasn't me. Now I'm not sure whether it was Bob Illario or Bill Bonatz.

Q Well what was said at this meeting, by either one of those two gentlemen?

A Something to the extent that—well the day before I believe we asked Mr. Willis if he had copies of our contract, and he said that he didn't, and this is the reason for the three contracts being brought to him. And I think when he accepted the contracts, we also told him that we would like to see that the contracts were signed by the following Friday.

Q And what did he say?

A In so many words—I can't quote him but—

Q As best as you can remember?

A —but as much as to say, "Well leave them here and we'll see what can be done," or something like that.

Q Now was there any mention to Mr. Willis that unless these contracts would be signed by the following Friday the men had voted to walk off the job?

A I believe there was.

Q And who said this, if you remember?

A I can't remember who said it. I mean, if four men are in a room in conversation, anyone could have said it. I know I didn't say it.

Q All right. Now how did this conversation end—or this meeting end?

[fol. 329] A Well I believe we just said, "Well I guess there's nothing more to say" and we left.

TRIAL EXAMINER: It was a brief conversation?

THE WITNESS: Very brief.

TRIAL EXAMINER: You went right to the point, and nothing happened—

THE WITNESS: That's right.

TRIAL EXAMINER: —and you went?

THE WITNESS: That's right.

Q (By Mr. Aronson) Now on September 30th, Mr. Gunderson testified—I believe on direct examination—that two employees of White Construction Company walked off the job. Are you aware of that?

A Two employees of White—I know of the incident. Now to say that I was aware of it before it happened, when it happened or after it happened, I can't say—because I worked for another contractor, in a slightly different location.

Q Would this be on September 30th?

A Even the date I'm not sure about.

Q When was the first work stoppage at this site, if you know?

A Well—

Q Let me withdraw that question. Now after the second meeting with Mr. Willis, did you attend a meeting with Mr. Willis the following day?

[fol. 330] A Not to my knowledge, no.
Q Do you know whether anyone else—
A Would this be on a Friday?
Q I believe that's true.
A No, I did not.
Q Do you know whether anybody else met with Mr. Willis?
A I believe Mr. Illario and Mr. Bonatz did.
Q And where were you?
A I was out at the gate talking to some men. This was before 8:00 o'clock in the morning.
Q Now did you have occasion, prior to the starting of work, to have a conversation with either Mr. Bonatz or Mr. Illario?
A Yes, I did.
Q And where were you when this conversation took place?
A Surrounded by a group of men—or I was with a group of men—or outside of the gate—
Q Would this be the parking lot area?
A The parking lot area.
Q All right. Now what was that conversation?
A Well Mr. Bonatz or Mr. Illario, one of them—one or the other—came out and informed me and all of the Engineers on the job that Burns & Roe had refused to do anything regarding the signing of a contract with the Operating Engineers.
Q And what, if anything, was said by the men or by you?
A The men said that they were not going to work [fol. 331] without a contract; and they walked off and went home.
Q Now prior to this day, was there any walk-off on the job site, to your knowledge?
A Not that I know of.
Q This would be the first stoppage of work, is that correct?
A Right.
Q Now did Mr. Bonatz or Mr. Illario—or did anybody tell the men to walk off?

A No, they did not. They couldn't have held them if they wanted to.

Q Now why do you say that, Mr. Behrend?

A Well—

MR. APRUZZESE: I ooject, your Honor.

THE WITNESS: The men all walked off of their own accord. This was—

MR. APRUZZESE: Pardon me, Mr. Witness—

TRIAL EXAMINER: Just a minute—

MR. APRUZZESE: He said "why do you say that?" I submit that—

TRIAL EXAMINER: Yes—I don't think it's a proper question. Sustained.

Q (By Mr. Aronson) Did you walk off the job that day?

A I was off the payroll but I was on the job site for some time after that.

Q So you didn't work but you were there?

[fol. 332] A That's right.

Q Now prior to the time the employees, this group, left the job—and you as well—had you been in contact with any representative of Local 825?

A No.

Q Did any representative of Local 825 tell you to tell the employees to walk off?

A No.

Q To your knowledge, did any representative of Local 825 know that this occurred?

A They did not know.

Q How do you know that, sir?

A Because when the men walked off, I called Local 825's office in Newark and informed them of the walk-off.

Q Whom did you inform?

A One of the clerks in the office. At the moment I don't remember which one. I mean, it's normal to pick up the phone and whoever answers, you give him the message.

Q Now you say a "clerk." Was this a business agent or a business representative?

A No, this is one of the salaried clerks in the office.

Q Male or female?

A Male.
Q And what did this clerk say to you, if anything?
A That he would—he said, "Okay, we know about it
[fol. 333] now." He put it on the pad to inform—whether he was going to inform Pete or the business agent of the territory, I don't know.
Q When you say "Pete," you mean Mr. Weber?
A Mr. Weber.
Q All right. Now, did you thereafter, on this day, have a conversation with anyone from Local 825?
A Yes, I did.
Q With whom?
A I received a phone call that—
Q From whom?
A There again, I don't—I don't remember particularly who it was. If anyone has ever been involved in one of these deals—things are moving kind of fast—you're not paying attention to who you're talking to. It's the message that counts. But I did receive a message that there was some kind of negotiations going on and to get the men back on the job right away.
Q And what did you then do, if anything?
A I made several telephone calls; I got hold of Mr. Bonatz who was up in a restaurant, to start contacting the men; and I believe that within four hours we had most all of the men back on the job—we did have the job operating within four hours.
Q Did Robert Illario return to work that day?
A No, he did not, to the best of my knowledge.
[fol. 334] Q Now, on or about October 6th, did you have a conversation with Mr. Suffecool?
A Yes, I did.
Q Who is Mr. Suffecool?
A Mr. Suffecool is the general superintendent of Poirier-McLane.
Q Now from the time that you returned to work until October 6th was there any work stoppage?
A No.
Q Now what was your conversation with Mr. Suffecool on October 6th?

A I informed him that there was restlessness amongst the men, that there was talk of more voting, more discontent on the part of the men, and that it was very possible that he may or may not have Engineers on the job the following morning. I wanted to make him aware of the fact because I knew that he would probably be ordering concrete the night before for the next morning's delivery, and I didn't want to have him have any unnecessary expense if such a thing occurred.

Q Now did—strike that. This restlessness you talked about—how did you become aware of this?

A The men were all talking amongst themselves; they came to me; they were griping, if you want to call it that, about the contract and the welding machines and the other things—and they were just getting discontented, in general.

[fol. 335] Q Did you, on this occasion of your conversation with Mr. Suffecool, tell him that the men of Local 825 had a dispute with Burns & Roe and White, but did not have one with Poirier & McLane?

A I definitely did not make that statement that Mr. Suffecool accuses me of making or stated that I made, or whatever it was. The extent of that conversation was the fact—it was his words—"I don't know why you're picking on Poirier-McLane, and I didn't give him any comment on it.

Q Now Poirier-McLane has cranes that perform work, do they not?

A Yes, they do.

Q How many cranes did they have in the months of October and November, if you know?

A Six and at one time, seven.

Q Now in addition to these—strike that. And these cranes, I believe there has been some testimony, that depending upon the size of them there would be the two engineers or an engineer and an oiler?

A That is correct.

Q In addition to the two operating engineers members of Local 825 who operate these cranes did Poirier & McLane have any other operating engineers employed for this crane, these cranes, to your knowledge?

A To service the cranes, we had two mechanics and
[fol. 336] the fuel man.

Q Now have you, in your experience with Local 825, of being an Operating Engineer, had occasion to work on a concrete pump or to be on jobs where there have been concrete pumps similar to the concrete pump that was brought on this particular job by White Construction Company?

A I have never had a concrete pump on a job that I have been lead engineer but I have been employed on jobs where there were concrete pumps.

Q Now on those jobs that you have been employed where there have been concrete pumps, how many men have been—Operating Engineers now—have been employed on these concrete pumps?

A On all of the jobs that I have—that I was on—or had seen—there were always two men employed on the concrete pumps.

Q These would be two Operating Engineers?

A Two members of Local 825.

Q Now on any of these jobs, in addition to members of Local 825, were there any members of any other craft or labor organization also working with 825?

A Yes, there were.

Q On the pumps, too?

A Not on the pumps, on the placement of the concrete.

Q Mr. Behrend, did you, at anytime, speak to any representative of any of the companies on this site, con-
[fol. 337] cerning the electric welding machine?

A Very early in the job.

Q When is that, sir?

A Well I would say within the first week of White's arrival on the job.

Q Sometime in September, 1965?

A That is correct.

Q Subsequent to that time did you at anytime, speak to anybody about the electric welding machine, from any company?

A Subsequent to the—what date did you give me?

Q To September, when White first came on the job.

A I think I had several conversations regarding the electric welding machine with the superintendent of White early in the job.

TRIAL EXAMINER: Who is he—Gunderson?

THE WITNESS: Gunderson.

MR. ARONSON: Gunderson.

Q (By Mr. Aronson) Sir, do you remember when the concrete pump came on the job there was discussion as to who would operate it?

A Yes, I do.

Q Did you, at anytime, during the discussions that occurred with the concrete pump, say to any representative of any company that Local 825, or the men, were demanding work either on the pump or a crane or on any [fol. 338] other type of equipment because of the electric welding machine?

A Definitely did not.

Q Now let me direct your attention to on or about November 4th and 5th, 1965—which is the date, or the approximate date, that an Iron Worker representative, an Iron Worker member, first started the electric welding machine. Do you remember the date, sir, that this machine was first started—the day it was first started—maybe not the date, but the day?

A I remember when it was first started.

Q Did you have occasion on that day to observe the electric welding machine?

A No, I didn't. I was on another part of the job for another contractor.

Q Did you leave your job and surround that machine that day?

A I definitely did not.

Q During the course of the day did you have occasion to see the machine at all?

A I did not see the machine at all that day.

MR. ARONSON: I have no further questions.

CROSS-EXAMINATION

Q (By Mr. Hannon) Mr. Behrend, we've talked about contracts—Local 825 contracts. Now there are

three subcontractors on the job down there at Oyster Creek, right?

A That's right.

[fol. 339] Q White, Poirier-McLane and Chicago Bridge?

A That's right.

Q Now you're employed by Poirier-McLane?

A That's right.

Q Are you familiar with the contract that Poirier-McLane has with Local 825?

A I know that—I know—by having checked with my office—and when I first went to work with Poirier-McLane—that they do have a—did have a signed contract and have a signed supplement to the contract, that is in possession with the office of Local 825.

TRIAL EXAMINER: Let me ask you this: The contracts that Local 825 has with various contractors, are they a standard form with a supplement to include differences or do you have entirely different contracts for different companies?

THE WITNESS: The only—there are two contracts that I have become familiar with in the course of being a lead engineer. One is a contract that is between the Associated General Contractors Association and our local; and one that is with the steel erectors association and our local.

Q (By Mr. Hannon) Now how about the so-called AGC—what contract is that?

A That is the Associated General Contractors.

Q Now how about the Building Contractors Association of New Jersey—are you familiar with their con-

[fol. 340] tractual relationships with Local 825?

MR. ARONSON: Objection; that's irrelevant.

MR. APRUZZESE: No, it isn't.

TRIAL EXAMINER: I don't know whether it is or not.

MR. ARONSON: What's the difference whether he's familiar with it or not?

MR. APRUZZESE: It's very relevant—

MR. HANNON: We're discussing contract terms here and the extension of a contract to Mr. Willis, and so forth, and so on. I think we have to define what contract we're talking about.

MR. ARONSON: There was never a discussion of any contract terms on direct testimony.

TRIAL EXAMINER: The fact that three contracts —three copies of contracts—were presented to Mr. Willis—I don't know what contracts they were. If the questioning is directed to that, I assume it's permissible. I don't know—

MR. APRUZZESE: Well if your honor please, Mr. Aronson was rather clear in his questioning; he talked about contracts—plural—that 825 had with employers. And he has tried to draw on this man's experience as an engineer over the years and with regard to the contracts —plural—that 825 had with employers in the industry. This is very relevant, as will be developed by the questioning.

MR. ARONSON: Mr. Trial Examiner, I don't believe [fol. 341] that I ever asked this witness if he was familiar with any contracts—

TRIAL EXAMINER: You certainly didn't ask him if he was familiar with them. I don't recall that, at all.

MR. ARONSON: Or that if he worked under any contracts or what these contracts provided for. I asked him what his experience was with men on the job.

TRIAL EXAMINER: Off the record.

(Discussion off the record.)

TRIAL EXAMINER: On the record. Now where were we?

MR. ARONSON: I believe I stated that I never asked the witness on direct whether he was familiar with—

TRIAL EXAMINER: That's correct—that's my recollection.

MR. ARONSON: —with the terms of the contract.

MR. APRUZZESE: That's not so, sir.

TRIAL EXAMINER: He asked if he was familiar with it?

MR. APRUZZESE: No, he asked him—he said he never asked him what some of the provisions provided; he specifically asked him what did the Local 825 contracts require with regard to the employment of a lead engi-

neer. And the witness responded: "Well our contracts say—

TRIAL EXAMINER: After five.

MR. APRUZZESE: —after five. So he got into the substance of contracts. This is what we want to get into it.

MR. HANNON: And the manning of equipment.

MR. APRUZZESE: Right.

[fol. 342] MR. ARONSON: There was no questioning on direct about—

MR. APRUZZESE: If your Honor please—

TRIAL EXAMINER: I'd like the question read back. I don't know why in this—in the entire context of this case he can't be asked about the contracts.

MR. APRUZZESE: I don't know either.

TRIAL EXAMINER: But I don't know why he should be asked about contracts that might have no relation to any employer on this job.

MR. HANNON: That's the point, your Honor—it does.

TRIAL EXAMINER: Gee, I don't know what employers on this job, what subcontractors were members of any Association, or whether they were or not whether they were individual contractors.

MR. APRUZZESE: On direct examination, your Honor, when Mr. Willis testified, he was asked if Burns & Roe were—was a member of the Building Contractors Association of New Jersey, and he said they were. Mr. Escher testified on direct examination, at the first hearing, that he was a member of the Building Contractors Association of New Jersey and a trustee of that group; so therefore, this question of what contractual commitments exist between the Building Contractors Association and Local 825 is very relevant when we get into what are conditions that are supposed to apply. Because White and Burns & Roe are members of the Building Contrac-

[fol. 343] tors Association and not the AGC or the Structural Steel Association.

MR. ARONSON: And there is no contract at the present time and there hasn't been one for three years, which you know.

MR. APRUZZESE: That doesn't make any difference.

MR. HANNON: We're talking about Association membership, type of conditions in which a job is being run. Now, we do have—

TRIAL EXAMINER: I thought that they were under contract on this job.

MR. ARONSON: There is no contract between the Building Contractors Association and Local 825, and there has not been one for three years.

MR. HANNON: Mr. Trial Examiner, as we drew to your attention in the past case, again, White, one of the parties involved here, is a member of the Building Trades Contractors Association.

MR. ARONSON: No question—

MR. HANNON: White is working on this job. We have other contractors on this job that have AGC contracts. Now we have this man going in with a group, and these contracts—AGC contracts—being given to Burns & Roe.

MR. ARONSON: And, as a matter of fact, Mr. Trial Examiner, as long as we're mentioning AGC contracts, [fol. 344] there is no signed AGC contract at the present time.

MR. APRUZZESE: Well that's not relevant to the times in this particular proceeding.

MR. HANNON: Also, as far as Mr. Aronson's argument on the present existence of a contract between the respondent and that association, we all well knew that there's an outstanding 8(b)(3) against them for a refusal to bargain on it.

MR. APRUZZESE: Right. Which I ask you to take judicial notice of it, because you have previously—and the fact of the matter is—

TRIAL EXAMINER: There is no contract in effect—this is the point that is clearly established, and there wasn't any contract in effect at the time we're speaking about—September, October and November. If there is no contract in effect, why do you have to go into the terms of the contract for?

MR. APRUZZESE: Well the point is this, your Honor —the point is—and as we will develop—there was a contract with the Building Contractors Association—

TRIAL EXAMINER: Yes—that I understand.

MR. APRUZZESE: Right. (continuing) —which had vastly different provisions than this AGC agreement that they've spoken of. Now, when that agreement—

TRIAL EXAMINER: I'll agree with you there, although I don't know; I haven't seen the contracts but I assume there were differences.

[fol. 345] MR. APRUZZESE: And when that agreement, terminated, your Honor, the parties did not ultimately culminate a new agreement; and as a result of the negotiations there were various unfair labor practice charges filed—all of which were not concluded until about a month ago—when, as a matter of fact, the compliance was only signed on the 22nd of January. So that there wasn't a contract—

MR. ARONSON: No, of February.

MR. APRUZZESE: —the reason—of February—the reason there wasn't a contract—

TRIAL EXAMINER: I know the reason. The reason was set forth in the prior case and the Board has made a finding on that. It hasn't reached the courts yet, of course.

MR. HANNON: Mr. Trial Examiner, we have an outstanding question. I want to know whether the witness is going to answer it or not.

TRIAL EXAMINER: I'm going to sustain the objection.

Q (By Mr. Hannon) Although you are familiar with the contract between Poirier-McLane and Local 825?

A I am familiar—aware of the fact that a contract—a signed contract between the two parties, existed until its expiration, yes.

Q All right. Now are you familiar with the terms of that contract?

MR. ARONSON: I object.

[fol. 346] TRIAL EXAMINER: He can answer that question, whether he is familiar with the terms of it or not.

MR. ARONSON: It's irrelevant—completely irrelevant, whether he is familiar with it.

TRIAL EXAMINER: I don't know whether it's irrelevant or not, at this moment—objection is overruled. Are you familiar with the terms?

THE WITNESS: I'm not completely familiar with the terms of that contract.

MR. ARONSON: Would you read the answer back, please?

TRIAL EXAMINER: "I am not completely familiar with the terms of—

MR. HANNON: No—was that your answer?

THE WITNESS: That's right.

TRIAL EXAMINER: He said, "I'm not completely familiar with the terms of that contract."

Q (By Mr. Hannon) Now when you went in to see Mr. Willis—

TRIAL EXAMINER: Now this is the first time—

MR. HANNON: First time.

TRIAL EXAMINER: —September 29th.

Q (By Mr. Hannon) You went in with Mr. Bonatz?

A Right.

Q And during that conversation you mentioned that they didn't have a contract. What contract were you talking about? That is, Burns & Roe didn't have a contract.

[fol. 347] A Well in order to protect myself as a member of Local 825, it is my duty, or my prerogative, and the shop steward's duty, to check with our welfare fund, to find out if payments are being made into our welfare and pension fund, and that we are protected. If a contractor does not have a contract with us, he is not either aware or bound to pay into our welfare and pension fund. We protect ourselves by making a phone call to find out if a contractor does have a contract with us and if he's paying into the welfare and pension fund. On this particular occasion, I called and became aware of the fact that—or was told—that Burns & Roe did not have a contract, of any kind, with Local 825.

Q Who did you call?

A I believe I called our office in Newark.

TRIAL EXAMINER: In Newark. There would be no one else to call, is there?

THE WITNESS: No.

Q (By Mr. Hannon) When did you call?

A As I stated before, up to a certain period of time I didn't think Burns & Roe entered into the picture. When they made themselves—brought themselves out as the general contractor—

Q The question is "When did you call?"

A I called immediately after that.

TRIAL EXAMINER: He's fixing the time—as soon [fol. 348] as he knew that Burns & Roe were—

THE WITNESS: I called immediately afterward and questioned that status of Burns & Roe.

Q (By Mr. Hannon) And when was that?

A That was—

TRIAL EXAMINER: It was in September.

Q (continuing) —September—could have been September 28th, 29th, 27th.

TRIAL EXAMINER: It was before you spoke to Mr. Willis or came in with the contracts—

THE WITNESS: It was before the contract were presented to Mr. Willis.

TRIAL EXAMINER: The first conversation you didn't present any contract; it was the second time.

Q (By Mr. Hannon) All right. Now how many different welfare and pension funds are there administered by Local 825?

MR. ARONSON: I object.

TRIAL EXAMINER: There is more than one—and I don't care how many.

MR. HANNON: Your Honor, he's saying that this company didn't contribute to a fund. I want to know what fund it was.

THE WITNESS: I didn't say that they didn't contribute to it. I didn't make that statement. I said I was —it was my privilege to check to find out—

[fol. 349] MR. ARONSON: The objection was sustained, Mr. Trial Examiner.

TRIAL EXAMINER: Well he's volunteering this.

MR. ARONSON: Well may I direct the witness not to answer anything until a question is asked?

TRIAL EXAMINER: What?

MR. ARONSON: I'm just telling the witness not to answer anything until a question is asked.

TRIAL EXAMINER: Yes.

Q (By Mr. Hannon) And again, what was the conversation that brought up your knowledge that Burns & Roe was the general contractor on the job? When was this?

TRIAL EXAMINER: There was no conversation—at least he hasn't testified to a conversation. He found out; I don't know how.

THE WITNESS: I believe that would be caused by Burns & Roe's activity or action in applying to the Joint Board for a ruling on control of welding machines.

Q (By Mr. Hannon) Was it at that time that you found out, when they made this submission to the Joint Board?

A In that same particular time—I mean, I can't say day-by-day or in between. Now this is not—

TRIAL EXAMINER: What date was that, that the original—

MR. APRUZZESE: Submission?

TRIAL EXAMINER: The original submission, original letter?

MR. APRUZZESE: I believe it was October 6th.

[fol. 350] TRIAL EXAMINER: That's what I thought.

MR. ARONSON: The telegram was sent the 1st, I believe.

MR. APRUZZESE: October the 1st—I'm sorry—the first telegram was October the 1st.

TRIAL EXAMINER: It was about that time.

Q (By Mr. Hannon) It was about October 6th you made the call to find out whether they—

TRIAL EXAMINER: Oh—now wait a minute—he didn't say that, at all. We've got the date now as October 1—as about that time.

Q (By Mr. Hannon) All right—October 1, then, that you made the call?

TRIAL EXAMINER: It's about that time.

Q (continuing) —or about that time?
A I made the calls about the time that I was informed that there was not going to be any Operating Engineers placed on the welding machines on the White job, that's correct.
Q Now you mentioned that you were made aware of the submission by Burns & Rose to the National Joint Board. How did you find that out?
MR. ARONSON: Objection; it's irrelevant. What's the difference how he found it out?
TRIAL EXAMINER: I don't know what difference it would make. We're trying to find out the date when he made an inquiry concerning the contribution or non-
[fol. 351] contribution to a pension fund. If it is going to that date, I'll permit it. I don't care when he found out about when the submission was made by Burns & Roe to the Joint Board. If we're trying to fix the date, I'll permit it.
Q (By Mr. Hannon) When did you find out about their submission to the Joint Board?
MR. ARONSON: I just objected to that, sir. I—
TRIAL EXAMINER: Then I overruled the objection.
MR. ARONSON: Oh.
TRIAL EXAMINER: We're trying to fix the date, so I'm permitting it. I don't care when he found out except to the extent that it helps us to fix dates.
THE WITNESS: Incidents, I have in my mind; particular dates, I don't have in my mind. If you go some place between September the 27th and—in that area—I would assume that it might be—until October the 1st or—
Q (By Mr. Hannon) Well how did you find out?
MR. ARONSON: You sustained the objection to that, sir, as to how he found out.
MR. APRUZZESE: No, he didn't.
TRIAL EXAMINER: No, I didn't. Perhaps I should have, but go ahead. Let's get finished with what this witness knows the best way we can. If you know, and if you remember—
Q (By Mr. Hannon) How did you find out?
A If my memory serves me right, Mr. Gunderson in-
[fol. 352] formed me that they were making an assignment to the Iron Workers.

Q I'm talking now about the submission to the National Joint Board. Who told you that?

A Offhand, I don't remember. I had conversations with five or six people at about that time.

Q All right—now getting back to this vote that was taking place. What was the exact vote taken on now? Was it on the assignment of the electric welding equipment to Iron Workers?

A More than anything else it was on the fact that there was no contract existing, with the members of the local.

TRIAL EXAMINER: He said there was—there were two causes of restlessness, but that came up later.

Q (By Mr. Hannon) Well how did you find out there weren't any—now, we're again talking about contracts at this time—now what was your knowledge as to the contractual relationships at that time that the vote was taken with the different employees on the job site?

A By this time I was aware that there were no contracts existing between White and Burns & Roe, with the operating engineers.

Q How did you know?

A I stated before that I called up and asked.

TRIAL EXAMINER: Called Newark?

THE WITNESS: Called Newark.

Q (By Mr. Hannon) And you called to find out about [fol. 353] whether they were making contributions to a pension and welfare fund?

A That is correct.

Q Now how long did you—

A I said I—now don't get me fouled up. I told you that I—that it was my privilege to call to either find out if contributions were being made or whether our contract was signed; and in this particular case, as soon as I heard there was no contract, I may not have even continued on with the welfare fund. I don't remember at the moment.

TRIAL EXAMINER: In other words, if there was no contract, you knew that there were no payments being made—

THE WITNESS: That's right.

TRIAL EXAMINER: —voluntarily to any pension fund?

THE WITNESS: Right.

Q (By Mr. Hannon) Did you make any inquiry as to whether Burns & Roe had an International contract or was a member of any Association?

MR. ARONSON: I object. He called the local; and I don't think the local, first of all, would know this, nor would he ask this to a local.

TRIAL EXAMINER: Well let him answer as to whether he asked this or not.

THE WITNESS: I was not so informed that there was an International agreement in existence between Burns & Roe and the Operating Engineers either by my [fol. 354] office or in my conversation with Mr. Willis.

Q (By Mr. Hannon) Did you know whether White belonged to an association, other than the AGC?

A MR. ARONSON: I object.

TRIAL EXAMINER: Sustained. I want to stick whether a fact exists whether Local 825 had contracts with certain ones but didn't have contracts with the other one. I don't want to go into this membership business. You threshed that out in another proceeding. I'm not going to go back into that.

MR. HANNON: Your Honor, I'd like to make an offer of proof, possibly in—

TRIAL EXAMINER: You can make your offer of proof.

MR. HANNON: —in the witness' absence.

TRIAL EXAMINER: All right, make it in the witness' absence.

THE WITNESS: Do you want me to leave, your Honor?

TRIAL EXAMINER: Yes, you'll leave the room, please.

(The witness then left the hearing room.)

MR. ARONSON: I assume it's going to be an offer of proof in the form of a narrative statement, rather than—

TRIAL EXAMINER: Well it can't very well be in the form of question-and-answer, I would assume. Go ahead.

MR. HANNON: I offer to prove through this witness that the union had knowledge that White was a member [fol. 355] of the association, not the AGC; and that Burns & Roe was not a member of the AGC either. At this particular time, this union was interested in the electric welding equipment on that job. The electric welding equipment is covered under the AGC contract. It is not covered under the association contract. By giving Willis —that is, Burns & Roe and White—copies of the AGC contract to sign, the union is, by the same token, asking for the electric welding equipment.

TRIAL EXAMINER: Well we don't know yet what contracts he asked him to sign; I have no idea. All I know—

MR. HANNON: Well that's what I—

TRIAL EXAMINER: —is there are three contracts. Well ask him what the contracts were that he submitted. Why don't you get that in first. You've got me running around here in the dark in this case.

MR. ARONSON: I would stipulate, sir, that the union and the union officials knew what White and Burns & Roe were members of the Building Contractors Association. I'm sure Mr. Weber knows it and I'm sure all of the other business representatives know it. I won't stipulate that this witness knew it. I don't know if he knew it. And I think it's irrelevant.

TRIAL EXAMINER: Well is that stipulation satisfactory, at least as far as it goes?—that Local 825 knew? We have been asking many of these witnesses questions [fol. 356] concerning which they have no knowledge. You're dealing with the lower echelon here.

MR. ARONSON: However, I will not stipulate that this witness knew what was in a contract and what the AGC contract was, and that the Association contract contained something different, because there wasn't an Association contract. He talks about it and it's not in existence.

TRIAL EXAMINER: Well can't we find out—has nobody seen or known what contract was submitted to Mr. Willis?

MR. APRUZZESE: It's in evidence.

TRIAL EXAMINER: Then what are we arguing about?

MR. HANNON: Well I'm trying to determine from this witness why he gave this particular contract to Mr. Willis.

TRIAL EXAMINER: Well ask him that particular question.

MR. ARONSON: If you want, I'll stipulate that a contract was given to Mr. Willis and that's the one in evidence.

TRIAL EXAMINER: Well all right.

MR. ARONSON: You want that stipulation? I don't know who gave it to him—but either this witness or somebody else—

TRIAL EXAMINER: Somebody in that group that day.

MR. APRUZZESE: While we're stipulating, I think it would help clarify the situation, Mr. Funke, if we had this stipulated: First of all, if we can stipulate the copy of the contract that existed between Local 825 and the Building Contractors Association that expired two or three years ago, as Mr. Aronson said. Then we know what the [fol. 357] AGC contract is. That's in evidence. And if we have that, we have all we need on contracts, and all that—

TRIAL EXAMINER: That's what I thought.

MR. APRUZZESE: —and all of this questioning is relevant.

TRIAL EXAMINER: Relevant? It's unnecessary.

MR. APRUZZESE: I don't think it's unnecessary.

MR. ARONSON: I have never seen—I have never myself seen it.

MR. APRUZZESE: What—the previous contract?

MR. ARONSON: The Building Contractors' contract—

MR. APRUZZESE: Well I'll show you a copy of it.

MR. ARONSON: —which—well introduce it, if you want, through a witness of yours. I'm not going to stipulate to it. It's been out of effect for over three years; and to my mind, it's a worthless document. No one is following it now; no one has been asked to follow it now.

TRIAL EXAMINER: Let's get the witness back and get on with this.

MR. ARONSON: And if I might add, sir, there's negotiations going on for a new contract.

TRIAL EXAMINER: We have a stipulation now that three copies of a contract submitted by one of the Operating Engineers to Burns & Roe—Mr. Willis, of Burns & Roe—was the AGC contract. All right—that's [fol. 358] agreed upon. Then we know what was given to him.

MR. ARONSON: If that's the contract in evidence.

TRIAL EXAMINER: That's in evidence. Now let's get the witness back here.

(The witness returned to the hearing room and resumed the witness stand.)

MR. ARONSON: May I move, sir, that you reject the offer of proof?

TRIAL EXAMINER: I believe I did—and we're substituting this stipulation which satisfied my purposes. Yes, I rejected the offer of proof as given to me.

Q (By Mr. Hannon) You do then—you have recollection of being in Mr. Willis' office at the time the three contracts were given to Mr. Willis?

A Yes.

Q Where did you get the contracts?

A From our office in Newark.

Q Who got them from your office in Newark?

A I believe they were requested from Newark and one of the fellows on the job offered to go up and pick them up and bring them back to us.

Q Who requested them from Newark?

A About this time I'd say about every Engineer on the job.

Q Well somebody must have made a specific request.

TRIAL EXAMINER: So they requested them. I don't [fol. 359] care who it was.

Q (By Mr. Hannon) Did you request them?

A I don't remember; I may have.

TRIAL EXAMINER: They were requested; they were handed to Willis.

Q (By Mr. Hannon) All right—and how many contracts were brought down to the job—

MR. ARONSON: I object; that's irrelevant.

TRIAL EXAMINER: Sustained. Three were given to Willis.

MR. HANNON: No, we have other testimony elsewhere that three more were given to Gunderson.

TRIAL EXAMINER: Well that is when—we'll get around to that when we reach that point.

Q (By Mr. Hannon) Who was doing the work on the electric welding machine? Did Poirier-McLane have electric welding machines?

A Poirier-McLane did not have electric welding machines. They had gasoline-driven electric welding machines.

MR. HANNON: I'd like to have the exhibits, sir.

(Exhibits handed to Mr. Hannon.)

Q (By Mr. Hannon) Mr. Behrend, Mr. Willis—through Mr. Willis—this contract, which is marked as General Counsel's No. 4, was submitted into evidence. Now I know you're not going to say that this particular contract was handed to Mr. Willis but is this the same [fol. 360] type contract that was handed to Mr. Willis?

A It appears to be, yes.

TRIAL EXAMINER: Well you've got Willis' testimony, haven't we? Why do we need more, until it's contradicted?

Q (By Mr. Hannon) To your knowledge, does this contract cover all power-driven equipment on the job site?

MR. ARONSON: I object; the contract speaks for itself.

TRIAL EXAMINER: The contract does speak for itself. This witness has already testified that he was not completely familiar with them. The contract will speak for itself. You can brief the points of that contract, or the terms of that contract that you consider relevant.

Q (By Mr. Hannon) To your knowledge, Burns & Roe had no construction employees at that job site, did they?

MR. ARONSON: It's stipulated to.

THE WITNESS: To my knowledge, they do.
TRIAL EXAMINER: That's agreed to. A lot of these questions have no contradiction.
THE WITNESS: To my knowledge they had no employees of 825.
Q (By Mr. Hannon) Then why would the employees get excited then about Burns & Roe not having a contract—
TRIAL EXAMINER: How could he answer why they got excited?
MR. HANNON: He was part of the group.
MR. ARONSON: I object as to—
[fol. 361] TRIAL EXAMINER: You can ask him what he was excited about but not what the employees were excited about.
MR. ARONSON: I object to why—
Q (By Mr. Hannon) Did they tell you why?
MR. ARONSON: I—it's objected to, sir.
TRIAL EXAMINER: Sustained.
Q (By Mr. Hannon) Did they tell you why then that they elected you spokesman?
MR. ARONSON: I object.
TRIAL EXAMINER: Sustained.
Q (By Mr. Hannon) What then was your reason for being in there to submit these contracts to Mr. Willis?
A As a member of 825, I wanted to be sure that it was done.
Q That what was done?
A The contract was submitted to him.
Q Why?
MR. ARONSON: I object to "why."
TRIAL EXAMINER: Sustained. Let's not go into all of these "whys."
Q (By Mr. Hannon) Well did you have a reason for giving it to him? You just didn't walk in with the contract?
MR. ARONSON: It's been answered three times, Mr. Trial Examiner.
TRIAL EXAMINER: Sustained.
[fol. 362] MR. HANNON: I have no further questions.
TRIAL EXAMINER: Mr. Apruzzese.

CROSS-EXAMINATION

Q (By Mr. Apruzzese) Mr. Behrend, you testified that you worked at this project since October, '64, is that correct?

A That's correct.

TRIAL EXAMINER: '64?

MR. APRUZZESE: Yes—he said since October '64.

THE WITNESS: With other contractors, as I said—

TRIAL EXAMINER: Oh, oh—Burns & Roe only came in in '65, though?

MR. APRUZZESE: '64, Burns & Roe started the project.

TRIAL EXAMINER: Oh, I'm—

MR. APRUZZESE: White Construction came in in September, of '65. The project started in '64.

Q (By Mr. Apruzzese) All right, now, Mr. Behrend, you testified that you have worked at this project site since October, '64, is that correct?

A That is correct.

Q Will you kindly tell us for what employers your worked at the project?

A At the start of my employment at the project, I worked for Public Constructors. On the finish of their job, I went to work on the second contract that was awarded on the job site for Poirier-McLane.

[fol. 363] Q All right.

A That is the only two contractors I have been employed by on the job site.

Q Now I think you testified on direct examination, Mr. Behrend, that your function as a lead engineer is to be helpful to your contractor and be an asset to the man that employed—that employs you, is that correct?

A That's right.

MR. ARONSON: Mr. Behrend, take your hand down; I can't hear you.

Q (By Mr. Apruzzese) And that you have no responsibility to the union?

A I have no responsibility to the union.

Q I see. But you're nonetheless selected by the union? That's how the lead engineer is selected?

A That's right.

Q I see. Now you never worked for Burns & Roe, did you, at this project?

A No, I did not.

Q And to your knowledge, Burns & Roe never had any employees at this project site—construction employees?

A To my knowledge, they have never had any employees of 825 on the job.

Q Right. Now therefore, for that reason, you personally would actually have no concern as to whether [fol. 364] Burns & Roe was paying or was not paying welfare and pension funds—

MR. ARONSON: I object.

MR. APRUZZESE: —isn't that so?

TRIAL EXAMINER: Overruled.

Q (By Mr. Apruzzese) (continuing) Isn't that so? If they didn't have any 825 men working for them, you would not have to be concerned whether they were paying welfare and pension payments, would you?

A I would not have to be concerned whether or not they were paying welfare or pension funds on this particular job, if they did not have any employees of 825 on the job, that is right or if I—

Q Right—that's the question. And you wouldn't have to be concerned as to whether Burns & Roe was living up to the terms and conditions of a contract if they didn't have any 825 employees either, would you?

MR. ARONSON: I object, because that's not so.

TRIAL EXAMINER: Well let the witness answer, instead of you answering.

MR. APRUZZESE: That's right.

TRIAL EXAMINER: Overruled. Would you have any concern about a contract if there were no 825 members employed at Burns & Roe?

THE WITNESS: I most certainly would have a concern if the general contractor of a project was not bound [fol. 365] by a contract of our organization.

Q (By Mr. Apruzzese) Even if he had no employees?

A Definitely, if he had no employees or if he had—just the mere fact that he was the general contractor on

the site would give me cause to investigate whether or not he had a contract.

Q Now when did Burns & Roe come on that project—do you know?

A Prior to my employment on the project—and as I stated, my employment was October the 11th, 1964.

Q Were you aware, Mr. Behrend, who Poirier & McLane obtained their contract from to do work at the job site?

A Was I aware of—

Q Yes.

A —who they obtained their contract from?

Q Right.

A Only hearsay—I mean nothing definite.

Q What did you hear?

MR. ARONSON: I object as to the hearsay or rumor that he heard. It's irrelevant to this proceeding.

TRIAL EXAMINER: I don't know whether it is or not, at this point.

MR. APRUZZESE: Well let's strike that question and approach it this way—

Q (By Mr. Apruzzese) Mr. Behrend, when you go [fol. 366] on a job site, are you concerned as to who the general contractor is?

A Yes.

Q And I think you just testified that if you find out who the general contractor is you immediately—or you try to find out if he has a contract with 825, isn't that so?

A That is correct.

Q Now you worked on this project from September or October, of '64, to October, of '65, one entire year—

A Right.

Q —and I ask you, when you first went on that project, were you concerned as to who the general contractor was?

A I most assuredly was.

Q And did you try to find out who the general contractor was?

A I did.

Q And who did you find out the general contractor was?

A I was informed that General Electric was the general contractor.

Q And did you inquire as to what Burns & Roe was doing at the project?

A Yes, I did.

Q And what was your information as to who Burns & Roe were?

A They were the consulting engineers.

Q Now did you ascertain whether or not General [fol. 367] Electric had a contract with 825?

MR. ARONSON: I object.

TRIAL EXAMINER: Overruled. He has testified that he always made an inquiry. Now he was told that General Electric was the contractor—so now the question—

Q (By Mr. Apruzzese) Did you ascertain as to whether or not General Electric had a contract with Local 825?

A I am pretty sure that I did.

Q You did. And what did you find out?

A I was informed that there was something in the process and that—that everything was alright—and for me to be assured that we could work for General Electric.

Q And who so advised you, Mr. Behrend?

A One of the clerks in our office.

Q One of the clerks in your office?

A That's right.

Q Now when did you first make this inquiry—when you first went on the job?

A On my arrival on the job—within a couple of days after my arrival—I mean—

Q Did you ever make any subsequent inquiry as to whether or not General Electric obtained a contract?

A No, I did not.

Q I see. So that the first time, from your initial appearance on the project, which was back in '64, that you [fol. 368] were prompted to make any inquiry as to whether or not Burns & Roe had a contract was when this welding machine dispute arose?

MR. ARONSON: I object. That calls for a conclusion. There's no testimony in the record to that effect.

He can ask it in the form of a question, if he wants.

MR. APRUZZESE: Well I'm on cross-examination.

TRIAL EXAMINER: Read the question back.

(The question was read as follows:

"Q I see. So that the first time, from your initial appearance on the project, which was back in '64, that you were prompted to make any inquiry as to whether or not Burns & Roe had a contract was when this welding machine dispute arose.?")

TRIAL EXAMINER: What's the conclusion called for?

MR. ARONSON: It doesn't call—it's just not a question, sir.

MR. APRUZZESE: Certainly it is.

TRIAL EXAMINER: The question is was this the first time that he made inquiry with respect to Burns & Roe as to a contract with Local 825.

MR. ARONSON: I'll withdraw the objection.

TRIAL EXAMINER: That's the question. —was in September when you learned that certain equipment was placed on the job site?

THE WITNESS: The first time I made an inquiry as to Burns & Rose status, so far as contract with our or- [fol. 369] ganization was concerned, was when Mr. Willis, of Burns & Roe, informed me that Burns & Roe was definitely the general contractor of the job site.

Q (By Mr. Apruzzese) And that was at about the time that this dispute arose with the welding equipment after you had this meeting with all the men, isn't that so?

A Somewheres in that particular time, yes.

Q Now were you concerned with regard to whether or not White Construction Company had a contract with Local 825?

A Personally I was more concerned as to whether or not Burns & Roe had a contract with—

Q The question was not whether you were more concerned about Burns & Roe; were you concerned whether or not White Construction Company had a contract?

A As a member of 825 I'm always concerned as to whether or not a contractor has a signed contract with our organization.

Q Now when White Construction Company came on the project, did you endeavor to find out whether or not White had a contract?

A I believe I received the information regarding White just about the same time I received it regarding Burns & Roe.

Q Well now we've established that the first time you were concerned about Burns & Roe was at about the time that you had the meeting with the men on the welding equipment, which was on or about October the 1st. Now Burns & Roe came on the project about a month [fol. 370] earlier.

TRIAL EXAMINER: White, you mean—don't you?

MR. APRUZZESE: Excuse me—White.

Q (By Mr. Apruzzese) Now were you—did you endeavor to find out when White Construction first came on the job whether or not they had a contract?

A When they first came on the job, I had information that, in my mind, it wasn't deemed necessary for me to make that particular inquiry.

Q What was that information?

A That there were pre-job conferences to be held yet and that these—any and all problems concerning contracts—manning of the job—was to be settled at a pre-job conference—of which I am not a party.

TRIAL EXAMINER: You didn't attend it?

THE WITNESS: No, sir.

Q (By Mr. Apruzzese) And where did you get that information?

A Probably myself or one of the other members may have inquired as to the contract; and this is when we were informed that there was going to be a pre-job conference in the making, in the very near future. The members of the local aren't business agents. When they—

TRIAL EXAMINER: All right—you're answered the question pretty thoroughly.

* * * *

[fol. 388] CROSS EXAMINATION

Robert C. Kylberg, a witness recalled to the stand, being first duly sworn, was examined and testified further as follows:

Q (By Mr. Aronson) Mr. Kylberg, you previously testified in this matter on behalf of the General Counsel, is that right?

A Yes, sir.

Q And at the time you were employed by White Construction Co.?

A Yes, sir.

Q As general superintendent?

A Yes, sir.

Q I understand that you are now employed by someone else, is that correct?

A Yes.

[fol. 389] Q By whom?

A The Nicholson Co.

Q And when did your employment with White come to an end?

A The middle of January.

Q Now during the course of the investigation of this proceeding by the National Labor Relations Board you were interviewed by a Board agent and executed an affidavit, is that so?

A Yes, sir.

Q Did you execute one affidavit or more, if you recall?

A As far as I know, one, unless I have to get the thing sorted out in my mind. One here in this NLRB.

MR. ARONSON: Mr. Hannon, would you provide me with same?

MR. HANNON: Here is the original and a printed copy.

MR. ARONSON: Good. May I have a few minutes?

TRIAL EXAMIER: Yes.

(Brief Pause)

TRIAL EXAMINER: Back on the record.

Q (By Mr. Aronson) Mr. Kylberg, are you familiar with the fact that an assignment was made of the electrical welding machine, the starting and stopping, to the Ironworkers?

A Yes, sir.

Q Did you play a part in that decision, sir?
A Yes.
Q What part did you play?
[fol. 390] A Well, let me think. I discussed this thing with the principals of our company and the contractors association and transmitted the work to the superintendent.
Q This was discussed with the contractors association?
A Assignment, yes, to understand why we should do this to start with, who was to do it to start with.
Q Do you know when these discussions occurred?
A I have to think. We started the job in September. We discussed this internally among ourselves, one thing and another, I guess in late August.
Q In late August?
A Before the contract—before we started.
Q And what was concluded?
A That it was the work of the ironworker.
Q Do you know who made that final—did you make that final conclusion or did somebody else in the company do it?
A I would say it was a consensus. I did not make it, no.
Q Now you were general superintendent for White at the site, is that correct?
A No, for the company.
Q For White?
A Covered all the jobs, yes.
Q At the worksite that were discussed here today?
A No.
TRIAL EXAMINER: You weren't on this jobsite all [fol. 391] the time, were you?
THE WITNESS: No. General Superintendent for the whole company.
Q (By Mr. Aronson) Oh, I see, I'm sorry. Did you spend much time or any time at this site?
A Yes, I was down there at least once a week, and in its inception twice a week—at least.
Q Did you have any discussions with any of the trades or any representatives of the craft unions prior to September 27, 1965?

A Well, I'm a little hazy on dates, but let me say this—

Q Prior to the date the assignment was made to the Ironworkers?

A Yes. When we started the job the chairman—if that is the right term—of the building trades council requested a meeting with us, all the building trades, and I was the representative for White at this meeting. The representatives of all the building trades were there, except I don't think the Engineers were, although they were invited.

Q All right, so you had discussions?

A Yes.

Q Did you have any part in the concrete pump machine that came to the site?

A Yes.

Q Now either prior to the time this machine came [fol. 392] to the site or shortly after it arrived at the site, did you make any checks with anyone concerning the concrete pump machine and the operation of the same?

A Yes.

Q You made checks, is that correct?

A Yes.

Q You had never had a concrete pump machine before, had you, sir?

A I was familiar with them. I had seen them in operation.

Q Had you had any on any White jobs before?

A Not under my jurisdiction.

Q All right. So that you were not as far as White was concerned familiar with how many men would be assigned to a machine, et cetera?

A I familiarized myself with this.

Q You familiarized yourself with this by contacting rental companies, isn't that so?

A And manufacturers.

Q And manufacturers?

A That's right.

Q Did you ever contact, you personally, a contractor?

A No.

Q You didn't?
A This was done by other—
Q I just asked you if you did.
[fol. 393] A All right. But it was done by others.
Q I am just asking if you did, sir?
A The answer is no.
Q I am sure Mr. Apruzzese and Mr. Hannon will ask you other questions.
So that you had never checked with any construction companies to find out how many men they assigned? You personally?
A That's right, although I was told—
TRIAL EXAMINER: He answered that before.
MR. ARONSON: I am not asking you about what you were told. Just answer the questions.
Q (By Mr. Aronson) The assignment had been made of the electrical welding machine to the Ironworkers and the Joint Board issued its decision on or about October 19 or 20, 1965, correct?
A Yes, sir.
Q Now did you arrange a meeting with Mr. Webber?
A Yes. Well, you say did I arrange it. It was arranged.
Q By whom?
A Mutually between us.
TRIAL EXAMINER: You had a meeting?
THE WITNESS: We had a meeting.
Q (By Mr. Aronson) Who called Mr. Webber? Did you call him or did he call you?
[fol. 394] A I think the fact of the matter is that a second party called and said could I meet him. I said yes.
Q Do you remember who?
A No, sir.
Q Isn't it a fact that you called him to let him know that you wanted to meet with him?
A Have it your way.
Q I don't want it my way. I just want to know which way it was.
TRIAL EXAMINER: Let's get to the meeting.
Q (By Mr. Aronson) When did this meeting take place?

A I believe it was October 26.

Q During the course of this meeting did Mr. Webber ever say to you, "I want this electrical welding machine and if you don't give it to me I am going to put three men on a crane," or I'm going to do this, or I'm going to do that? Did he ever say it in those words?

A Yes, sir.

Q He said it in those words?

A Exactly that meaning.

Q I don't want to know the meaning. I want to know the words?

TRIAL EXAMINER: The witness can't remember verbatim. What do you expect him to do? Can you remember the conversation word for word?

[fol. 395] THE WITNESS: Not precisely. He pointed to a crane that was there and said, "How would you like to put three men on that crane?"

Q (By Mr. Aronson) Is that what he said?

A As best as I can remember.

Q Or did he say that he could insist on three operators on that crane?

A Well, I don't know what the difference is.

Q Well, I am asking you what did he say, sir?

TRIAL EXAMINER: You have asked him that. You expect him to repeat it verbatim.

MR. ARONSON: I think there is quite a bit of difference.

THE WITNESS: The impression that—

MR ARONSON: I don't want the impression.

Q By Mr. Aronson) Do you remember exactly what he said?

TRIAL EXAMINER: He told me he didn't.

THE WITNESS: I can only remember the impression.

MR. ARONSON: Mr. Hannon, may I have the original affidavit.

(Document handed to Mr. Aronson).

MR. ARONSON: Mr. Reporter, would you mark this as Respondent Exhibit 3 for identification.

(Document referred to above was marked Respondent Exhibit No. 3 for identification.)

Q (By Mr. Aronson) I show you what has been [fol. 396] marked for identification as Respondent Exhibit No. 3 and ask you if you would take a look at it and identify it for us? This is your affidavit, is it, sir?

A It looks like it, yes, sir.

TRIAL EXAMINER: Is it your signature at the end of it?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Are the initials on each page?

THE WITNESS: Well, the signature looks like mine. I would make no question with the affidavit whatever.

Q (By Mr. Aronson) It is yours?

A Yes, sir.

Q Now I call your attention or ask you to read over that paragraph of the affidavit which starts with, "On our return to the job"?

A Yes, sir.

Q Would you read it over, sir? Just read it to yourself.

A Yes, sir. (Witness complies) I have read that paragraph. Do you want me to read to the bottom of the page?

Q Well, to the end of the paragraph. The new paragraph starts, "I asked him." All right, sir?

A Yes.

Q In reading that paragraph over, does that refresh your recollection as to what was said?

A Yes.

Q Now I ask you did Mr. Webber say to you that he [fol. 397] could insist on three operators on each crane?

A Well, that's the way it is written here.

Q Is that what he said to you?

A Yes.

Q All right, then that refreshes your recollection. He didn't say to you that he would put three operators on a crane unless you gave him the welding machine, did he? Or that he would insist on it? He said he could?

A Yes.

Q During that conversation with Mr. Webber, he never mentioned a thirty-hour week, sir, did he?

A Yes.

Q If you want to look at your affidavit again—
A I believe it was mentioned, yes.
Q Here is your affidavit again, sir.

(Document handed to the witness.)

(Witness silently reads the document.)

THE WITNESS: I think he did mention a thirty-hour week. I don't read it here, but I seem to remember that that was mentioned.

Q (By Mr. Aronson) Did you tell that to Mr. Hannon or whoever interviewed you?
A I think I did. Apparently maybe I didn't.
Q Now in your statement, sir—
A May I look at something in my pocket?
[fol. 398] Q I have no objection if you show me what you are looking at.
A This happens to be a copy. I have this here—if this happens to be a point of interest.

(Witness takes out a document and reads it over.)

Q (By Mr. Aronson) You are looking at your testimony, sir, in the prior proceeding?
A Yes.
Q Have you looked at that before you came here today, sir?
A Briefly, yes, sir.
Q I am looking at your affidavit now. You made no mention in there, did you, sir, about a thirty-hour work week?
A I don't read it here.
Q Did you, sir, and isn't it also a fact that Mr. Webber never mentioned anything about triple time for overtime?
A No.
Q He never mentioned that to you, did he?
A No, I said he did mention it to me.
Q Oh, he did?
A Yes, sir.
Q And did you tell that to the person who interviewed you?
A Yes. There seems to be a mix-up in affidavits.

Q Is that in your affidavit, sir? Forget your testimony. Is that in your affidavit?

A No.

[fol. 399] Q But you told that to the person?

A I think so, yes, sir.

Q Well, was it said?

A Yes, sir.

TRIAL EXAMINER: The point is was it said?

THE WITNESS: Yes, sir, it was said.

TRIAL EXAMINER: By Mr. Webber?

THE WITNESS: Yes, sir.

Q (By Mr. Aronson) Now you read this affidavit over before you signed it, didn't you, sir?

A Yes.

Q And you swore to it as being true?

A Yes, sir.

Q Yet you never made any mention about the thirty-hour week or the triple time for overtime not being in there? Didn't you want to include that in there?

TRIAL EXAMINER: Now just a minute. That's not what he said. He said it isn't in his affidavit. He didn't say anything about not wanting to include it.

Q (By Mr. Aronson) You read that statement over before you signed it?

A Yes. I think you have to remember the timing in this. This thing was made on the jobsite—this affidavit was signed at the jobsite—and made up hurriedly at the jobsite. Afterwards a couple more recollections came [fol. 400] back to me, but the affidavit was already complete. So later on I brought these points out.

Q So that when Mr. Hannon or whoever interviewed you at the jobsite spoke with you, you didn't mention the thirty-hour week or the triple time for overtime?

A Not at the time the affidavit was written, but I remembered this later.

Q Did you call Mr. Hannon or anybody from the Board and tell him this?

A Yes, I brought this out in discussions.

Q Your recollection improved after the time you signed the affidavit?

A Yes, sir.

Q How long after?
A Oh, the next day, the next week. I didn't realize the discussion with Mr. Webber was going to shall we say reach this stage. I kept no notes. So as things occurred to me, why I recall them.
Q Now at the conclusion of your meeting with Mr. Webber, you indicated, "Well, let things stand until Mr. Escher gets back from vacation," isn't that so?
A What I said was that, in essence, that we will not operate the welding machine until Mr. Escher gets back, yes.
Q And Mr. Webber said that was okay with him, is that right?
[fol. 401] A Yes, this is the way I understood it.
Q And there was no triple time for overtime or anything of that nature, was there?
MR. HANNON: I object. We've been over this several times.
TRIAL EXAMINER: You mean was it put into effect?
MR. ARONSON: Yes, afterwards?
THE WITNESS: It was not put into effect.
Q (By Mr. Aronson) Yes, but at the time you had no contract with Mr. Webber, did you?
A That's correct.
Q And had he insisted upon triple time for overtime it wouldn't have been a violation of any agreement, would it?
MR. APRUZZESE: I object, Your Honor, that is a conclusion.
TRIAL EXAMINER: Well, of course it wouldn't be. If there was no contract there wouldn't be a violation. I don't know that anybody has said that there was a violation of a contract here.
MR. APRUZZESE: I think it is meaningless; it is irrelevant.
TRIAL EXAMINER: I agree with you but I will permit it. There was no contract; there couldn't be a violation.
MR. ARONSON: Did the witness answer?
TRIAL EXAMINER: Yes, he did—I believe.

[fol. 402] MR. APRUZZESE: Well, it is a rhetorical question. We can do without those.

MR. ARONSON: It is not so rhetorical.

Q (By Mr. Aronson) Were you at the jobsite when the pump was there?

A I was there a couple—the pump was there a couple of weeks before it was run. What specifically do you mean?

Q Were you there when the pump was in operation?

A No.

Q When were you there, two weeks before it was—

A A matter of days before or days after, I don't know.

Q You mentioned something about Mr. Webber—you said to him that you would put a man on the concrete pump and let him work there all the time, steady, on that pump even though the pump wouldn't be working all the time?

A Yes, sir.

Q Do you normally make such offers of that nature, sir?

A Not normally, no.

Q Why did you make it in this case?

A Because this is an unusual case. We were attempting to make peace. I didn't know, really, what Mr. Webber's concern was and I was endeavoring to make a little peace.

Q By telling him you'd put men on your payroll when you didn't need them?

TRIAL EXAMINER: That was his testimony.

[fol. 403] THE WITNESS: This is a way of putting it, yes.

Q (By Mr. Aronson) And what did Mr. Webber say to that? Didn't he say that was illegal?

A No, he didn't. He said he wasn't interested in the concrete pump.

Q And did he also say to you, sir, that this would be a violation of the Hobbs Act and he couldn't do such a thing and he was surprised that you mentioned it to him?

A No.

Q He didn't say that to you?
A No, sir.
Q How long did this conversation with Mr. Webber last?
A Well, there were two essential conversations after lunch—maybe a half-hour.

* * * *

[fol. 406] Q (By Mr. Aronson) Now you testified, sir, that you have only told us the pertinent parts of the conversation, is that correct?
[fol. 407] correct?
A Yes, sir.
Q When you say pertinent, what do you mean by pertinent? What does pertinent mean to you? Why is this pertinent?
A The principal questions that were raised, the principal answers that were given, and the decisions arrived at.
Q During the course of the conversation were any threats made to you that there was going to be picketing if this wasn't done or that wasn't done?
A There were threats made to me.
Q Picketing?
A I don't remember that picketing was made, no, sir.
Q Did Mr. Webber—what were the threats made?
A Well, one of them was the three men on the crane.
Q Well, what did Mr. Webber say?
TRIAL EXAMINER: You got exactly the words you want. I am not going to have you repeat the question three or four times. You read from his statement, you had him read his statement, and you got exactly what you wanted on that point.
What other things did you regard as threats?
THE WITNESS: The idea of triple time for overtime. The idea of working the men on a thirty-hour week. Those were what I considered threats.
Q (By Mr. Aronson) Did Mr. Webber at any time say that those things would occur unless something hap-
[fol. 408] pened? Did he say that they would occur unless something happened?

A No. I would use the word "could" occur.

Q Subsequent to this conversation with Mr. Webber on October 26, did you have any further conversations with Mr. Webber?

A Subsequent to that? No, I don't think I ever spoke to Mr. Webber again other than casually just to pass him. No.

Q Do you know whether Mr. Escher spoke to Mr. Webber? Were you there when Mr. Escher spoke to him?

A On the telephone, yes, sir.

Q Were you on the phone or were you just listening?

A No, I was next to him—like this.

Q You just heard what Mr. Escher said?

A Yes, sir.

Q You didn't hear what Mr. Webber said?

A That is correct.

MR. ARONSON: I have no further questions.

MR. HANNON: I have no questions.

MR. APRUZZESE: I have no questions.

TRIAL EXAMINER: You are excused.

(Witness Excused)

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[fol. 409] DAVID SAMUEL BODINE, SR.

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Give your name and address to the reporter.

THE WITNESS: David Samuel Bodine, Sr., 19 Sheldon Road, Pemberton, New Jersey.

DIRECT EXAMINATION

Q (By Mr. Aronson) Mr. Bodine, I note that you have a rather loud speaking voice. Is this your normal speaking voice?

A It gets loud at times. It goes up and down.

Q It is not any indication of your emotion then, is [fol. 410] that right?

A No.

TRIAL EXAMINER: I always like to have a witness we can hear.

Q (By Mr. Aronson) Mr. Bodine, are you a member of any labor organization?

A International Union of Operating Engineers, Local 825.

Q And how long have you been a member, Mr. Bodine?

A '43.

Q Since 1943?

A Yes.

Q And are you presently employed, sir?

A Yes.

Q By whom?

A White Construction.

Q At the Oyster project that we have been talking about—the Oyster Creek project?

A Yes.

Q And how long have you been employed by White Construction?

• • • •

[fol. 416] Q (By Mr. Aronson) On the first day when you came to the jobsite, on the pump, who was working on the pump on that day, if you recall?

[fol. 417] A I came there November 16 or 17, somewhere around there. After I was signed up, I was told not to do anything until two other men got there.

Q Who told you this?

A Chris Gunderson.

Q What did he say to you?

A He said, "Wait, I have two men coming."

Q Did you wait?

A So I waited. And about 9 o'clock he told me to go ahead, that laborers were going to help me assemble the pipe.

Q What did you say, if anything?

A So I asked him about the Engineers. He didn't answer me on that. Well, then I went on to proceed to assemble the pipe. Bobby Illario came along and said that was all right, to work with them—

MR. APRUZZESE: I object, Your Honor. There isn't any question before this witness. I think the last question was—

MR. ARONSON: All right, I'll ask him a question, Mr. Apruzzese.

Q (By Mr. Aronson) After you started work on this pipe, did you have any conversation with Mr. Ilario?

A Yes.

Q What was that conversation?

A Just that it was all right for the laborers to help [fol. 418] me until two other engineers got there.

Q And did you proceed to work?

A I did.

Q Did two engineers appear on the job?

A In the afternoon, yes.

Q What happened?

A Well, it was raining, I know that. And I saw them go in the office.

Q Did they come out of the office?

A I didn't see them any more that day.

Q Did you continue to work that day?

A Well, I was just about finished assembling the pipe when I seen them go in the office.

Q So you were finished with your work for the day?

A Yes.

Q Did you report to the job the next day?

A Yes.

Q Tell us what happened on the next day?

A I was in the trailer, or in the shanty there, and I saw the two men come back in, so I figured they were going to be with me for the pour.

Q What two men are you talking about?

A Two engineers.

Q That had been there the day before?

A That had been there the day before.

[fol. 419] Q Did you go to the machine to work?

A I went over and took the canvas off of the machine.

Q This would be a protective canvas?

A Yes, for the rain. And I saw the two men come out of the trailer, the office trailer.

Q These would be the two—
A The two engineers. I asked them if they were signed up and they said no, they wasn't; they wouldn't sign them up.
Q What did you do at that point, if anything?
A I went over to Poirier-McLane's shanty where the engineers stay.
Q Is that where you were supposed to report to work?
A At the time White didn't have a shanty for the operating engineers.
Q What did you do over at the shanty?
A I went inside. I didn't do anything.
Q How long did you stay there?
A I stayed there until around ten o'clock when Chris came over after me—Chris Gunderson came after me.
Q Did you have a conversation with Mr. Gunderson?
A He called me outside. I walked out. He said he wanted to start the pump, that the concrete was there.
Q What did you say?
A I said, "I'm not starting it."
Q Did you say to him that you had orders not to start it?
[fol. 420] A I did not. I said I would not start the machine.
Q Why wouldn't you start this machine?
A Because I wasn't going to violate my conditions.
Q What conditions?
A Well, I should have at least one other engineer with me.
Q Now when you said this to Mr. Gunderson, what did he say?
A I walked on over to the pump and he asked me two or three times again, and I said, "I told you once I'm not starting it. That's it."
Q What did he say?
A Well, when he found out I wouldn't say any more than that, he then walked away.
Q Did you start the machine that day?
A I did not.
Q Did anybody tell you not to start it?
A No, they didn't.

Q During the course of that day were there any operating engineers physically preventing you from starting this machine?

A No, there wasn't.

Q Were you threatened by anybody?

A No, I wasn't.

Q Were there any operating engineers around the machine when you were there?

A Oh, they had come up—different one had come [fol. 421] along and asked me what the trouble was. And I'd just say, "I'm not starting," or something like that. No conversation or anything.

Q And what would happen when the conversation ended, to these people who came over?

A They would leave.

Q Was there anybody—any operating engineers surrounding or around this machine during the entire day to your knowledge?

A They weren't surrounding it but they were in that area.

Q Who was in that area?

A Well, these two that were sent in to be signed up, that wasn't signed up. They stayed around that area.

Q Now had you desired to operate this machine, could you have operated the machine with these people where they were?

MR. APRUZZESE: I object. I don't know what that question is supposed to mean, Your Honor. I don't see that it is meaningful—had he desired to operate the machine.

TRIAL EXAMINER: Yes, he wants to know if he wanted to operate the machine, could he have operated it. Could you?

THE WITNESS: Yes, if I wanted to.

TRIAL EXAMINER: The import is no, he wasn't prevented from operating it by any physical circumstances.

Q (By Mr. Aronson) Did anyone say to you that you shouldn't operate this machine because of an electrical welding machine?

[fol. 422] A No, they didn't.
Q Did your decision not to operate this machine have anything to do with the electric welding machine?
A It did not.
MR. ARONSON: I have no further questions.

* * * *

[fol. 423] CROSS EXAMINATION

Q (By Mr. Apruzzese) Mr. Bodine, who is Robert Illario?
A He's a member of 825.
Q I think you testified that on this day that you came to the job and you were supposed to work on the concrete pump with these two men, these Ransome men that have been identified, a short while later Bobby Illario came up to you and spoke to you, is that correct?
A Repeat that question.
[fol. 424] Q Well, you have testified that when you went on this pump, the first day that you showed up, and Chris said, "Two men are going to come by to help you," these two Ransome men you just identified, and thereafter Bobby Illario came to speak to you?
A On those two Ransome men—those two Ransome men did not touch anything on that. I wouldn't let them.
Q All right, okay.
A I wouldn't let them.
Q All right. The questions is this. Did Bobby Illario then come up to speak to you?
A He came up and told me that two engineers would be there to help me, and to work with the laborers until they got there.
Q Do you normally take orders from Bob Illario on a job when he is there?
A I take orders from my lead engineer.
Q I see.
TRIAL EXAMINER: Was Illario a lead engineer?
Q (By Mr. Apruzzese) Was Bobby Illario the lead engineer for White Construction?
A That's what he told me.
Q He told you he was the lead engineer for White Construction?

A Yes.
Q Did he?
[fol. 425] A That's what they say.
A That's what who says?
A Who who says? I just said it.
Q You just said it?
A Yes.
Q And who told you he was the lead engineer for White Construction?
A Well, I know that he was there as lead engineer—or supposed to be.
Q Well, how do you know that?
A Well, he told me.
Q I see. Do you know whether he in fact was hired as the lead engineer by White Construction?
A That's none of my business.
Q Oh, I see.
A I'm not to question the lead engineer.
Q Are you supposed to take orders from the lead engineer?
A Yes.
Q I see. When you reported to work for Mr. Gunderson, did you ask him who the lead engineer was for the White Company?
A There wasn't any there then.
Q I see. Now then, you say Bobby Illario came up to you. And what did Bobby Illario tell you?
A That there would be two engineers and to go ahead [fol. 426] and work, let the laborers help me assemble the pipe.
Q Was it because he told you that it was all right for you to work with the laborers that you worked with them?
MR. ARONSON: I object as to why he did what he did.
MR. APRUZZESE: I think this is very basic, Your Honor.
TRIAL EXAMINER: Certainly he did it because he was told by Illario. That has relevance. Objection is overruled.
Q (By Mr. Apruzzese) Was that the reason you worked with these laborers, because Illario told you it was all right to work with them?

A Yes.
Q Now if Illario didn't tell you it was all right to work with the laborers, would you have refused to work with them?
A Yes, I would.
MR. ARONSON: I object.
TRIAL EXAMINER: Sustained.
MR. ARONSON: May I ask that the answer be stricken from the record?
TRIAL EXAMINER: It will by physically in the record. They will strike it. It is in there.
MR. ARONSON: Mr. Witness, may we suggest that the witness not answer questions if an objection is raised.
TRIAL EXAMINER: It is very hard for witnesses to do that.
MR. APRUZZESE: If you hear an objection, Mr. Witness, just don't answer the question.
[fol. 427] THE WITNESS: I didn't hear the objection.
Q (By Mr. Apruzzese) So that that first day you worked with the laborers. Now let's go to the following day when you came back to the project. The second day that you went back to the project, did you know whether or not Mr. Illario was employed as the lead engineer by White Construction on that day?
A No.
Q You didn't know?
A No.
Q Whether he was the lead engineer or not?
A Only that he said he was the lead engineer.
Q So that on the second day did you consider that he was the lead engineer?
A Yes.
Q And you had to follow his orders?
A Yes.
Q I see. So that when Chris Gunderson asked you to start up the concrete machine, you refused, did you not?
A Yes.
Q And did you refuse because of the instructions that Illario had given you, that it was only okay to work with laborers until the engineers got there?

MR. ARONSON: I object. I don't believe that's what was testified to.

[fol. 428] TRIAL EXAMINER: I haven't heard that testimony to go that far. He was told by Illario it was all right to work with these laborers.

MR. ARONSON: The day before.

TRIAL EXAMINER: The day before.

Q (By Mr. Apruzzese) But didn't Illario tell you it was all right to work with the laborers until the two engineers showed up?

A For the day before, yes.

Q Right. So on the next day, when you refused to operate the concrete machine, isn't the reason you refused to operate the concrete machine because you knew, pursuant to Illario's orders, that you could only work with the laborers until the engineers showed up?

MR. ARONSON: I object. That is not the testimony, Mr. Trial Examiner.

TRIAL EXAMINER: Well, the testimony now has been that he could work with the laborers until the engineers showed up.

MR. ARONSON: The day before.

TRIAL EXAMINER: Now we come to the next day.

MR. APRUZZESE: Right.

Q (By Mr. Apruzzese) And the next day these two engineers were there, right?

A Yes.

TRIAL EXAMINER: And you didn't work. And [fol. 429] what we are trying to find out is why you didn't work the pump that day when the two engineers were there?

THE WITNESS: Because White refused to sign them.

TRIAL EXAMINER: And you understood from Illario then that you were not to work with laborers if engineers were there, is that right, or isn't it?

THE WITNESS: The only thing that he said was the first day.

TRIAL EXAMINER: You could work?

THE WITNESS: I could work with them until the engineers arrived.

TRIAL EXAMINER: And the second day the engineers arrived?

THE WITNESS: They had arrived the first day, but I was finished.

TRIAL EXAMINER: Yes, I remember that testimony.

Q (By Mr. Apruzzese) When the engineers were there, pursuant to his orders then, you wouldn't work with laborers, you would only work with engineers, isn't that so?

A That's right.

Q Right. So you were following his orders when you refused to operate the concrete machine?

A No, I was not.

Q Oh, I see.

A I didn't talk to him then. I hadn't seen him all day.

[fol. 430] Q Wasn't Illario there?

A I saw him around, but not to talk to.

Q Now on this second day you said you were in the shanty until 10 o'clock or thereabouts when Chris Gunderson came to bring you out or asked you to operate the machine, right?

A Yes.

Q And you refused to operate the machine?

A Yes.

Q And these other two men who had been sent to work with you on the pump, they were in the area of this machine as well, is that correct?

A Yes.

Q When you refused to operate the pump, you had no work to do then, did you?

A Refused to operate the pump?

Q Yes. You refused to start the concrete pump, correct?

A Yes.

Q So that meant you didn't have any work to do, isn't that so?

A Yes.

TRIAL EXAMINER: You were still being paid, were you not?

THE WITNESS: No, I was off the payroll then.

Q (By Mr. Apruzzese) All right, you were off the payroll and you didn't have any work to do, right?

TRIAL EXAMINER: That's what he said.

[fol. 431] Q (By Mr. Apruzzese) Why didn't you go back to the shanty instead of standing by the pump?

MR. ARONSON: I object as to why he didn't do anything.

TRIAL EXAMINER: Overruled.

THE WITNESS: I didn't have to go back to that shanty. I wasn't on Poirier-McLane's payroll. It was their shanty. And White didn't have one for me.

Q (By Mr. Apruzzese) You weren't being paid, isn't that correct?

A Yes.

Q And you had no work to do?

A Yes.

Q Why didn't you leave the job? Why did you stay by the pump?

A I had a day's pay coming and I wasn't paid off.

Q Why did you stay by the pump?

A I stayed in that area of the pump.

Q Why?

A I just felt like it.

Q I see. That makes more sense.

TRIAL EXAMINER: It is a free country.

MR. APRUZZESE: That makes sense.

Q (By Mr. Apruzzese) Do you recall, Mr. Bodine, if in addition to the two men that were sent for the pump there were two other engineers that were sent to [fol. 432] work on a crane that same day?

A I don't know.

MR. APRUZZESE: Okay, I have no further questions.

REDIRECT EXAMINATION

Q (By Mr. Aronson) Did anyone tell you to leave the area of the pump, Mr. Bodine?

A No, they didn't.

TRIAL EXAMINER: Did you stay there all day?

THE WITNESS: Yes.

Q (By Mr. Aronson) Now, on this second day—
TRIAL EXAMINER: Did the two other engineers stay with you all day—the two men that were sent out but didn't work?
THE WITNESS: No, I don't think they were around. They took off.
MR. APRUZZESE: Oh, I have one other question.
MR. ARONSON: Go ahead.

CROSS EXAMINATION (Continued)

Q (By Mr. Apruzzese) Didn't the concrete arrive in a truck for use that morning with the pump? Didn't the concrete truck arrive?
A Yes.
Q And what happened to the concrete? Was it used?
A I don't know.
Q You don't know. Wasn't it actually poured on the ground?
A It could have been, but I don't know.
[fol. 433] Q I waited around to see if the pump was going—
A I didn't follow the truck around.

* * * *

[fol. 434] Q On the day before?
A Yes.
TRIAL EXAMINER: The laborers were working.
THE WITNESS: The laborers and I assembled the pipe.
Q (By Mr. Aronson) All right. Now, on this second day were there any laborers at the machine?
A In the area, yes.
Q Were they working on the machine?
A No.
Q What were they doing?
A I don't know. They had wheelbarrows and shovels.
Q Were those laborers there to work on the pump machine with you, if you know?
A Well, one of them that was there is still with me working on the pump.
Q No, on this particular day was he scheduled to work with you on the machine?

A I don't know that.
Q You don't know that. Did you have any conversation with the laborers?
A No.
[fol. 435] Q On the day before, when Mr. Gunderson told you that there would be two men with you on the machine, did he mention that they were Ransome men?
A I know he told me that there was two men coming, and "don't do anything until they get there."
Q Did he tell you who the two men were going to be?
A He could have.
Q You don't recall?
A Not now I don't.
MR. ARONSON: I have no further questions.
MR. HANNON: No questions.
MR. APRUZZESE: No questions.
TRIAL EXAMINER: You are excused. Thank you.

(Witness Excused)

TRIAL EXAMINER: It is only 2:35. Do you want another witness?
MR. ARONSON: Whatever you say, sir.
TRIAL EXAMINER: I can go until 3:30. Let me put it that way. I think we can finish a witness in an hour.
MR. ARONSON: I think so. Mr. Bonatz.

WILLIAM BONATZ

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Give your name and address [fol. 436] to the reporter.
THE WITNESS: William Bonatz, 330 Iroquois Drive, Bricktown, New Jersey.

DIRECT EXAMINATION

Q (By Mr. Aronson) Mr. Bonatz, are you a member of a labor organization?
A Yes, sir, I am.

Q Which one?
A Local 825.
Q And how long have you been a member of Local 825?
A Since 1945.
Q And are you presently employed, sir?
A I am.
Q By whom?
A White Construction Co.
Q And how long have you been employed by White Construction?
A Around the beginning of October. The exact date I'm not sure of.
TRIAL EXAMINER: 1965?
THE WITNESS: Yes, sir.
Q (By Mr. Aronson) And at the Forked River site?
A Yes, sir.
Q And by whom were you employed prior to that at the site?
A Chicago Bridge and Iron.
Q For how long, approximately, if you remember?
[fol. 437] A January of 1965, the beginning of the year.
Q And were you employed by anybody prior to Chicago at this site?
A Not on that site, no.
Q Are you presently a shop steward?
A No, sir.
Q Were you a shop steward at this site?
A Yes, sir.
Q From when to when, approximately, if you can't remember the exact dates?
A From approximately the beginning of the summer until January of 1966.
Q That would be the summer of 1965 until January of 1966?
A Yes, sir.
Q Were you present at a meeting of employees on or about September 28, September 29, 1965?
A Yes, sir.
Q And who else was there?

A All the operating engineers of the job.
Q And where did this meeting take place?
A In Poirier-McLane's shanty.
Q Will you please tell us what the purpose of this meeting was, or what was done at this meeting?
A Well, the men had quite a few beefs, squawks. One was the welders, one was the contract. But I believe [fol. 438] that's about all that was discussed at that meeting, that I can remember.
TRIAL EXAMINER: You mean the contract or the lack of a contract?
THE WITNESS: The lack of a contract or agreement.
Q (By Mr. Aronson) And was any conclusion reached at this meeting as to what was going to happen?
A Yes, sir.
Q And what was that conclusion?
A The men felt if we couldn't get an agreement signed with White and with Burns & Roe that they didn't want to work, and also with the welding machines in there.
Q You say the men felt this. Was there any indication as to how many men felt this way?
A Yes, all of them.
Q Did you or anyone else tell the men not to work?
A No, sir. They told us.
Q After you were told this, did you contact the union and tell them about this?
A I myself?
Q Yes.
A No.
Q Did any representative of the union know about this vote?
A Not as far as I know.
TRIAL EXAMINER: You mean any representative up at Newark?
[fol. 439] MR. ARONSON: I mean any business agent or any officer of the union.
THE WITNESS: When you say representative I figure from a B.A. up.

TRIAL EXAMINER: Right. Then we all know what we are talking about—to some extent.

Q (By Mr. Aronson) Were you present, sir, with Mr. Behrend when he spoke with Mr. Willis, or when there was a conversation with Mr. Willis on or about September 29?

A I believe so, yes.

Q And do you remember who spoke, either you or Mr. Behrend?

A No, sir, I don't.

Q Do you remember what either one of you then said to Mr. Willis?

A No, sir, I don't remember the exact.

Q Well, would it refresh your recollection, sir, to say that one of you said to Mr. Willis that the operating engineers had voted to strike after a certain date unless a contract was signed? Does that refresh your recollection?

A Well, they weren't going to work.

Q And is that what was said?

A Yes.

TRIAL EXAMINER: It was clearly indicated there would be a work stoppage. Whether you want to call it [fol. 440] a strike or not is immaterial.

THE WITNESS: Right.

Q (By Mr. Aronson) And was it indicated that the men had voted this?

A Yes, sir.

Q And what did Mr. Willis say?

A I don't remember if he had anything to say.

Q Were you present on the following day at a conversation with Mr. Willis?

A Yes, sir.

Q Was Mr. Behrend there?

A No, sir.

Q Was Mr. Illario there?

A Yes, sir.

Q And do you remember which one of you two gentlemen did the talking?

A I imagine Bobby did.

Q Did you?

A No, sir.

Q Do you remember what Mr. Illario said to Mr. Willis?

A He asked him if the contracts were signed.

TRIAL EXAMINER: What was the answer? What did Willis tell him?

THE WITNESS: He said no. He said his position was the same as it was the day before, or words to that effect.

[fol. 441] Q (By Mr. Aronson) Do you remember if Mr. Illario said anything else?

A Not that I can remember. That was about the end of the conversation.

TRIAL EXAMINER: Am I correct when I assume that both of these conversations were very brief? They went right to the point, that was it, and you then got out?

THE WITNESS: More or less, sir.

Q (By Mr. Aronson) On October 1 or thereabouts, did you have a conversation again with Mr. Willis?

TRIAL EXAMINER: This witness and some other persons with him.

MR. ARONSON: Yes, with somebody else being present.

TRIAL EXAMINER: Did you go back—you and Illario or whoever it was?

Q (By Mr. Aronson) Did you and Mr. Illario go back and speak to Mr. Willis?

A I imagine so, yes.

Q Do you remember that happening?

TRIAL EXAMINER: Is this when Shinn was there?

MR. ARONSON: No, sir.

THE WITNESS: Not too well.

TRIAL EXAMINER: But it could have happened that you went back?

THE WITNESS: It could have happened, yes, sir.

[fol. 442] Q (By Mr. Aronson) Would it refresh your recollection to say that either one of you two gentlemen told Mr. Willis that unless the contract was signed that the men had voted to walk off that day?

A Well, that was prior to that.

Q The day of the first work stoppage did you have a conversation with Mr. Willis?
A Yes, sir.
Q Who else was there?
A Bobby Illario.
Q Do you remember who spoke?
A Bobby Illario.
Q And what did he say to Mr. Willis, if you can recall?
A He asked him if the contracts were signed.
Q And what did Mr. Willis say?
A He said no, that his position was the same as it was the day before.
TRIAL EXAMINER: Now we are on the second day. We are repeating his testimony as to the second day, am I correct?
MR. ARONSON: Yes, sir.
Q (By Mr. Aronson) Did you thereafter leave Mr. Willis and where did you go?
A To the parking lot.
Q So that there are only two conversations with you and Mr. Willis, is that correct?
[fol. 443] A No, I think there were three.
Q Three?
A I think. There were probably many more.
TRIAL EXAMINER: These three days in a row that we are talking about?
THE WITNESS: In this area.
Q (By Mr. Aronson) When you left Mr. Willis and went to the parking lot, who was at the parking lot?
A All the operating engineers.
Q And was there any conversation there?
A Yes, they wanted to know the answer.
Q Were they told the answer?
A Yes, sir.
Q By whom?
A Well, I told some. Bobby told some. You don't talk to 35 guys all at once. Some were near me, some were near him.
Q Did the men say anything?
A Not much.

Q What did they say?

A They said, "Well, we're going home, we'll see you." A lot of guys said different things. But they left.

Q Did you tell them to leave?

A No, sir.

Q Did anybody tell them to leave?

A Not that I heard.

[fol. 444] Q Was this the first day that any operating engineers left the job?

A As far as I know.

Q Well, as shop steward, sir, would it be part of your responsibility to know whether any operating engineer would leave the job? You would normally know this, would you not?

A Yes and no. Not necessarily.

Q Did you return to the job that afternoon?

A Yes, sir.

Q Approximately what time? How soon or how long after you had left?

A Oh, three or four hours. I don't know exactly. I cannot say.

Q When you returned to the job did you have a conversation with Mr. Willis?

A Not that I can remember on that day.

Q All right. Did anybody ask you why you were returning to the job?

A Not that I can remember. We were rather busy trying to get the men back.

TRIAL EXAMINER: Rounding them up?

THE WITNESS: Rounding them up.

Q (By Mr. Aronson) Were you in touch with representatives of the union? I mean now people in Newark from the business agent up, prior to the time you re-[fol. 445] turned to work but after the time you stopped work?

A I myself, no, sir.

Q Do you know whether anybody else was?

A I assume they were.

Q Did Mr. Behrend tell you he was?

A Yes, he did.

TRIAL EXAMINER: Did he find you in the lunch room? Is that it?

THE WITNESS: Yes.

Q (By Mr. Aronson) Mr. Behrend would have been the one who told you that he was told that everyone should go back to work, is that correct?

A He met me in the lunch room and said, "Bill, get the men back on the job as quick as you can. I called the hall."

I said, "What's going on?"

He said, "I'll tell you about it later. Get the guys back on the job." And that's what I did.

Q Correct. Now on or about October 6, 1965, did you say to anyone that unless an operating engineer was assigned to the welding machine there would be no operating engineers on the job the following day?

A Not that I can remember.

Q There was a work stoppage, was there not, sir, on or about October 7?

A I believe so, yes.

[fol. 446] Q How did this work stoppage come about, do you know?

A I believe they started the welding machine.

Q Now after the welding machines were started, what happened?

A The men walked off.

Q Did you tell the men to walk off?

A No, sir.

Q Well, when the men walked off was there a meeting?

A No, I think the meeting was prior to that.

Q When, sir.

A A week maybe.

Q This would be the meeting you discussed back on or about October 1 or on or about September 29?

A I believe so.

TRIAL EXAMINER: You said that your recollection of this meeting on the jobsite was that there were two areas of disagreement or discontent among the engineers. One was the lack of a contract, and the second was the

question of who was the operate the welding machine, is that correct?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: Those two things were discussed at this meeting and they finally came to the conclusion that if they didn't get a contract they wouldn't work?

THE WITNESS: Yes. And that goes in along with the electric welders.

[fol. 447] TRIAL EXAMINER: In other words, there was discussion of the fact that if an engineer didn't operate this machine you wouldn't work, or they wouldn't work? Am I correct?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: So then there came a day when the machine was operated?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: And it wasn't operated by an engineer?

THE WITNESS: Well, there was a couple of—

TRIAL EXAMINER: Two days it was operated by an engineer?

THE WITNESS: Right.

TRIAL EXAMINER: The third day it was not?

THE WITNESS: When the ironworkers started, then there was trouble.

Q (By Mr. Aronson) Let me direct your attention to on or about November 4, 1965, which would be the first day the ironworker started and stopped the electric welding machine. Do you recall that day, sir?

A Yes, sir.

TRIAL EXAMINER: What machine?

MR. ARONSON: The electric welding machine.

TRIAL EXAMINER: That was the first day?

MR. ARONSON: Yes, on or about November 4.

Q (By Mr. Aronson) For whom were you working at that time?

A White now.

[fol. 448] Q At that time?

A White.

Q Did you in any way physically prevent the ironworker from operating this machine?

A No, sir.

Q Did you surround the machine?

A No, sir.

TRIAL EXAMINER: You have to have some association in order to surround it. It is difficult to surround an object all by yourself. You weren't part of any group that surrounded it, were you?

THE WITNESS: I went over to some of the fellows who were there.

Q (By Mr. Aronson) And how long did you stay there?

A I have no idea. A few minutes. A matter of minutes.

Q A matter of minutes?

A Yes.

Q Then you went back to work on your machine, is that correct?

A I don't believe our machine was working.

Q Was something wrong with it?

A No, sir.

MR. APRUZZESE: It would be a lot better if you asked the questions.

Q (By Mr. Aronson) Were you paid for November 4 and 5?

[fol. 449] A I believe so.

Q Did you work November 4 and 5?

A I don't believe so.

TRIAL EXAMINER: You know when you are working and you know when you are not working, don't you? You can tell the difference between working and not working?

THE WITNESS: Yes.

TRIAL EXAMINER: There is no confusion in your mind about that?

THE WITNESS: Not too much.

Q (By Mr. Aronson) When the concrete pump came to the site, on or about November 15, do you remember that date, sir?

A Yes. It came on the job the 1st.

Q On the 1st?
A Yes.
Q And it started operation on or about the 15th of November, is that right?
A The 15th, yes.
Q Did you, sir, in any way instruct Mr. Bodine not to operate that machine?
A Mr. Bodine wasn't on the job at that time.
Q On the 15th of November?
A No, sir.
Q When did Mr. Bodine report to the job?
A Around the 16th.
[fol. 450] Q On the 16th of November did you in any way instruct Mr. Bodine not to operate the pump?
A No, sir.
Q Did you have any conversation with Mr. Bodine about the pump?
A Well, when he came in on the job—I had called for a man for the welding machine—I mean for the pumpcrete machine—and he came down. He introduced himself to me, which prior to this I didn't know him.
I said, "Are you the man for the pumpcrete?"
He said, "Yes."
I said, "Well, I'm Bill Bonatz. Come on, we will get you signed up."
TRIAL EXAMINER: You told him you were shop steward, didn't you?
THE WITNESS: Yes. So I took him in the office and got him signed up, told him there's the machine, they are going to start setting it up.
Q (By Mr. Aronson) What did you do then, leave?
A Yes.
Q Leave the area?
A Yes.
Q You say you called the hall to get a man for the pump?
A Yes, sir.
Q Why did you call the hall for a man?
[fol. 451] A I was asked to call.
Q Who asked you?
A Chris.

TRIAL EXAMINER: Gunderson?
THE WITNESS: Yes, sir.
Q (By Mr. Aronson) Did you at any time tell Mr. Gunderson that only one operating engineer would be needed on this pump at all times?
A No, sir.
Q What did you tell Mr. Gunderson?
A We go back to when they started setting up the machine.
Q All right, sir.
A There were two men assembling pipe. I challenged them for a union book. They had none. They told me they were equipment men, Ransome equipment men. So I told them they are not supposed to set the machine up. I said, "Just hold off a minute until I go talk to Chris." So they did.

Chris was coming from Burns & Roe's office. I went over to Chris and I said, "Chris, I see we are moving the pump. What are you going to do with the pump?"

I believe this was a Monday because he said, "We are going to pour Wednesday."

So I said to him, "Well, Chris, the setting up of this machine is our work." I said, "We don't only man this equipment, we set it up, run it, maintain it, disassemble [fol. 452] it," et cetera. "That is all part of the operation with the work."

So he says, "All right, get me a man."

So I called the hall and I asked for a man. And with that Dave came down the next day.

Q You were aware of the fact, sir, that Mr. Bodine refused to operate the pump, were you not?
TRIAL EXAMINER: The second day.
Q (By Mr. Aronson) On the second day?
A No.
Q You didn't know that. Well, did it come to your attention there at any time that Mr. Bodine was refusing to operate the pump?
A Yes.
Q And did you at any time say to any representatives of White—
MR. APRUZZESE: Your Honor, I would like to ob-

ject to some of these leading questions. I think he has been awfully leading with this. I didn't hear the rest of it, but "Did you at any time say . . ."—he is asking questions—

TRIAL EXAMINER: Well, there have been allegations made to this effect. Now it is very difficult to deny allegations. You cannot do it without leading.

MR. ARONSON: You have to do it with leading, I believe. I believe I can ask the witness specific questions—

TRIAL EXAMINER: As to an allegation made against him.

[fol. 453] MR. ARONSON: Yes.

TRIAL EXAMINER: Certainly.

MR. APRUZZESE: Well, go ahead. I don't know what you are going to ask him.

Q (By Mr. Aronson) Did you at any time tell any representatives of White or any other company that the work stoppage on the concrete pump was because of the fact that an ironworker was assigned to the electric welding machine?

A No, sir. The welding machine deal was settled prior to this.

Q What do you mean "was settled prior to this"?

A We had a court order or injunction to stay away from it, so we did.

Q Did you ever have a conversation with Mr. Darisek about a work stoppage, or a work stoppage that occurred on October 1?

A Is his first name Larry?

Q Lawrence Darisek.

A Yes.

Q You had a conversation with him?

A Yes.

Q What was that conversation and when did it occur?

A Larry came to me and asked me—he said he had heard rumors that there was going to be a work stoppage, et cetera. They wanted to confirm it. I told him it was no rumor.

Q What else did you tell him, if anything?

[fol. 454] A That's about it.

Q Do you remember when this took place?

A No, sir, not the exact date or time or place.
Q Did you ever say to Mr. Darisek that if White and Burns & Roe didn't sign a contract the man had taken a vote that there would be a work stoppage and that the rumor he heard was true?
A Well, that was the rumor that he had heard. And he asked me if it was so. And I says, "Well, it is not a rumor, that's the truth," that that's what it was.
Q You were working on the crane, were you not, sir, on or about November 17 or 18, 1965?
A Yes, sir.
Q Did there come a time when you had some difficulty with that crane?
A Yes, sir.
Q Do you remember the date?
A The day they poured concrete.
Q Which day was this?
A Or were supposed to pour concrete.
Q Which day was this?
A It was a Wednesday.
TRIAL EXAMINER: This was the second day—this was Bodine's second day, was it?
THE WITNESS: Right. This would be the 17th, I believe.
[fol. 455] Q (By Mr. Aronson) Who was on the crane with you?
A Jimmy Cherry.
Q What happened to the crane?
A It started. It quit. We went to see what was wrong with it. We took the plugs out. We cleaned the points. We cleaned the plugs, put them back, and tried to start the machine. It wouldn't start.
Q Were there any representatives of White there at the time?
A When you say "there," what do you mean? You mean where the crane was?
Q Yes.
A Where the crane was, no.
Q What did you do when it wouldn't start?
A Well, I left the crane and I went to see Hank.
TRIAL EXAMINER: Hank who?

THE WITNESS: Hank Behrend. But I got favors and stuff from him before on the job, to get equipment going, et cetera. That's why I went for Hank. When I go for Hank, Danny Flynn is up there.

TRIAL EXAMINER: Who is Danny Flynn?

THE WITNESS: Danny Flynn is the guy that owns the rig.

MR. ARONSON: The crane?

THE WITNESS: The crane, right. At this time it wasn't clear in my mind who takes care of the repairs, [fol. 456] who buys the parts, et cetera. The machine in my estimation needed points and plugs. When Danny was there I talked to him and I asked him about it. He said, "Get them," which I proceeded to do.

Q (By Mr. Aronson) Did you pay for the points and the plugs?

A We did not buy plugs. We bought points and a condenser.

Q You say we. Who do you mean by we?

A Well, me.

Q Did you pay for them?

A Yes.

Q Did you get a receipt for it?

A Yes, sir.

Q What did you do with it, the receipt?

A I kept it. Then when I showed it to—

Q To Mr. Hannon?

A Mr. Hannon.

Q Were you ever reimbursed for the money that was spent?

A I don't remember.

Q Did you tell Mr. Gunderson that you bought plugs or points or whatever you bought?

A Oh, yes, we talked about it. I told him what we had done and he said, well, give it to Roger or Bob or whoever was handling the petty cash. I said, "Well, Flynn told me to get it and I'll get it off him."

[fol. 457] Q Did you ever get it off anybody?

A Not that I can remember, no. But the job ain't over yet.

Q You haven't forgot about it?

A No, sir, not now.

Q When you came back with the equipment, what did you do with it—the parts that you bought?

A We put the points in and the condenser in the rig and it started.

Q Did you subsequently have any conversation with any representatives of White about this?

A No, I didn't.

Q What time of day was it when the rig started?

A Well, it was late in the afternoon by the time we got everything complete.

Q Did you do any more work that day?

A No. Jimmy and I, after we put the points in the rig, we looked around, and it was rather late, we looked around for ironworkers and nobody was around. We hung around to approximately 4 o'clock, five after four, then we left.

Q Did you come on to the jobsite the next day?

A Yes, sir, I did.

Q Did you have a conversation with Mr. Gunderson?

A Yes, sir, I did.

Q Would you tell us what the conversation was?

A I told him the rig was ready to go, that it was all [fol. 458] set, because I hadn't seen him that I know of, that I can remember, the night before.

Q What did he say?

A Well, he wanted to know if we was going to go to work. And I told him in view of the fact that all—the way the conditions were and the troubles we were having —that I had no desire to work for him, "I'm leaving." And I asked him to get himself squared away one way or the other and if he wanted me back he could call me; if he didn't want me back, then that was all right, too. And I left.

Q Did you say to Mr. Gunderson that you were leaving because of the electric welding machine?

A I told you before that the electric welding machine was settled. There was no more about the electric welder.

TRIAL EXAMINER: We are on the concrete pump, aren't we?

MR. ARONSON: I'm aware of that. The allegation

of the General Counsel is that it was because of the welding machine.

TRIAL EXAMINER: I remember, yes.

MR. ARONSON: I have no further questions.

CROSS EXAMINATION

Q (By Mr. Hannon) Mr. Bonatz, you talked about having a meeting in the Poirier-McLane shanty when the vote was taken. Who called the meeting?

A Well, the men more or less called the meeting. They agreed to meet. The word spread like wildfire that there [fol. 459] was going to be a meeting of the engineers in the shanty at noontime.

Q Who got the men together?

A Well, the men more or less got themselves together. They asked me to be there and I was there.

Q Do you recall when this was?

A The exact date, no, sir.

Q Well, there was a work assignment on the electric welding equipment to the ironworkers on September 27. Does that help you refresh your recollection as to when this meeting was called?

A No, sir, it does not.

Q Well, was it before—

TRIAL EXAMINER: We've got the date of this meeting, haven't we—the 29th?

MR. ARONSON: On or about the 29th or 28th.

Q (By Mr. Hannon) It was possibly a couple of days after the assignment to the ironworkers of the electric welding work?

A It is possible.

TRIAL EXAMINER: The date or the time isn't seriously in dispute.

Q (By Mr. Hannor) Now you said in answering a question from your counsel that in a second meeting with Mr. Willis that you imagine that Bobby Illario did the [fol. 460] talking. Why do you imagine that Bobby Illario did the talking?

A Because I imagine that he did the talking.

Q Was there any particular reason?

A No, no.
Q That you might imagine this?
A No, no particular reason. Should there have been?
TRIAL EXAMINER: Your own witness said he thought Illario did the talking. What difference does it make who did the talking?
Q (By Mr. Hannon) In your meeting back in the shanty, the Poirier-McLane shanty, the fellows taking a vote, you said "they told us." This is an answer to a question—you said, "They told us they weren't going to work." Who was "us"?
A By "us" I meant the two leads and the steward.
Q And the two leads—the two lead engineers?
A Yes.
Q That would be Behrend—
A I meant Behrend, Illario, and myself.
Q Why would the men tell you three that they were going out? What would the reason be?
MR. ARONSON: I object as to why.
TRIAL EXAMINER: Sustained. He was the shop steward and they were the lead mechanics. Who else was there to tell?
Q (By Mr. Hannon) Now you mentioned that on [fol. 461] November 4, on the date the electric welding equipment was started up, that you went over to it and some of the fellows were there. Who were some of the fellows?
A Brother engineers.
Q Can you name any of them?
A Not off-hand, no.
Q Would it refresh your recollection to say Joe Gatti?
A Joe might have been there, yes.
Q And what were they doing?
A Standing around the machine talking.
Q Do you recall seeing anybody on the machine?
A Do you mean sitting on it?
Q Yes.
A No.
Q About how many of these fellows were there?
A One, two, three—I don't remember that much.
Q You don't remember that?

A No.

Q Now return your recollection to approximately November 16. This would be just to go through the sequence. On November 15 you are going to start the pump. Mr. Bodine was to come in on the pump—

A On the 16th.

Q Right.

TRIAL EXAMINER: At that point he hadn't been [fol. 462] identified. The next day he showed up in response to call to the hall.

Q (By Mr. Hannon) After that time did any engineers come to you about employment on the concrete pump?

A I don't get you. You've got to give me that again.

Q This is after Bodine is there for assignment on the concrete pump—

A He's on the job.

Q You are the shop steward at the time. Did anybody come to you at that time indicating to you that they are now employed or to be employed by White on the concrete pump?

A At that time, no.

Q Thereafter did anybody come to you and tell you that they were to work on the pump or on the crane?

A To me, no.

Q Didn't you in fact refer some men to Illario?

A Yes, sir.

Q Who were these men?

A They were men who were supposed to be on the pump.

Q When did you refer them to Illario?

A After Illario got there.

Q When did Illario get there?

A After Bodine.

Q What was your knowledge as to what Illario's position was?

A I assumed Illario was supposed to be the lead en- [fol. 463] gineer as of that date.

Q Why did you assume this?

A Because Bodine came on the job and constituted the fifth man, and I was expecting a lead engineer to come down from the hall.

TRIAL EXAMINER: And Illario appeared, is that right?

THE WITNESS: Yes.

Q (By Mr. Hannon) Were you in fact expecting Illario?

A Not Illario—any more than I expected Bodine.

Q But then you referred these men that came in for assignment, you referred them to Illario?

A Because as far as I was concerned at that time Illario became lead engineer of that job, and all the men from then on are referred to the foreman or the lead or the master mechanic.

Q Well, were they hired?

A Were who hired?

Q These four men that came in, were they hired?

MR. ARONSON: I don't think we had testimony about four men.

TRIAL EXAMINER: I don't either.

MR. HANNON: Well, he talked about two men on one occasion and I think two men on another.

MR. ARONSON: I think that's a misstatement of the testimony.

[fol. 464] TRIAL EXAMINER: I recall two men. Now there may have been two different men, but there were just two men at any one time.

MR. ARONSON: That's all I recall.

TRIAL EXAMINER: There were not four men at one time.

MR. APRUZZESE: Oh, yes, there were, but not from his testimony.

TRIAL EXAMINER: Well, he is examining him on it. So he shouldn't use four men when he is questioning this witness.

Q (By Mr. Hannon) On these first two men that came to you, did they tell you they had been hired?

A When they come to me, they don't come to me after they have been hired. They come to me before they get hired, to know where to go.

Q Why would they come to you?

TRIAL EXAMINER: Shop steward.

THE WITNESS: If you walk on a job, where do you know where to sign up? Where do you know you know you're going to work?

Q (By Mr. Hannon) Well, where were you at the time?

A On the job.

Q So they came out to you as shop steward. All right. Why didn't you refer them to Gunderson?

MR. ARONSON: I object as to why he didn't do something.

THE WITNESS: Because—

[fol. 465] MR. ARONSON: Mr. Witness, there is an objection.

TRIAL EXAMINER: This testimony is pretty clear. I don't know why we are going all over it bit by bit, an agonizing bit by bit.

Anyway, they were sent to the shanty, weren't they, by somebody?

MR. HANNON: He sent them to Illario. I just want to know why he didn't send them to Gunderson.

TRIAL EXAMINER: Gunderson was the superintendent, wasn't he? I don't think it is usual to send them to the superintendent.

MR. HANNON: I want to find out from the witness why he sent them to Illario.

THE WITNESS: Because it is standard procedure to send them to the master mechanic.

TRIAL EXAMINER: He answered this four or five times.

Q (By Mr. Hannon) It is your understanding that Mr. Illario—

MR. HANNON: Mr. Trial Examiner, I would like to call your attention to the fact that the witness just winked to somebody back here.

TRIAL EXAMINER: Well, what am I going to do about that?

THE WITNESS: Do you want me to stick my face to the wall?

MR. HANNON: Well, we seem to have had this problem before.

[fol. 466] TRIAL EXAMINER: I haven't noticed the problem.

MR. ARONSON: I object to this statement as to the problem before.

Q (By Mr. Hannon) Did you have a conversation with Bodine when he came in on the job to run the equipment? Did you in any way refer him to Illario?

A Illario wasn't there.

TRIAL EXAMINER: Mr. Illario wasn't there.

Q (By Mr. Hannon) Did you in any way tell him to take his problems to the master mechanic?

MR. ARONSON: I object. There is no testimony that he had any problems.

TRIAL EXAMINER: Well, there is no testimony that any master mechanic was there when Bodine came in. Let's not ask questions for the sake of asking questions.

MR. HANNON: I have no further questions.

CROSS EXAMINATION

Q (By Mr. Apruzzese) Mr. Bonatz, you testified that when the engineers had this meeting at the Poirier-McLane shanty they discussed the lack of a contract and the need for an engineer on the welding equipment, isn't that so? Those were the two basic items of discontent, correct?

A Yes.

Q Was it your purpose when you went, together with Behrend and Illario, or whomever you went with, to see [fol. 467] Mr. Willis, to tell him about this discontent, this is what you wanted remedied on the job?

A I believe so, yes.

Q Right. So therefore when you did go to see Mr. Willis you told him that, "There isn't a contract here, Burns & Roe doesn't have a contract, the men are dissatisfied with it and we want it; and the men are also dissatisfied that there isn't an operating engineer on the welding equipment." Isn't that so?

A Yes.

* * * *

[fol. 468] TRIAL EXAMINER: Proceed.

Q (By Mr. Apruzzese) Mr. Bonatz, were you on the project working for White Construction Co. on or about November 4? This is the day when they started up the electric welding machine after the Joint Board decision.

MR. ARONSON: I am going to object. This was asked and answered by General Counsel and by me.

MR. APRUZZESE: You don't know the question I am going to ask.

[fol. 469] MR. ARONSON: Well the question you just asked has been asked—

MR. APRUZZESE: Well I want to establish whether or not he was there.

TRIAL EXAMINER: Well it's been established he was there on November 4th.

Q (By Mr. Apruzzese) All right—now when this electric welding machine was started on November the 4th, Mr. Bonatz, isn't it a fact that the Engineers working on two cranes—the cranes that White Company had —came off their cranes and shut off the electric welding machine?

A I know the welders were shut off, but I don't know as it was—when you say "two cranes," you involve four men.

Q Right.

A There's one button.

Q Right.

A Now I don't know that that—

TRIAL EXAMINER: Go ahead.

Q (By Mr. Apruzzese) Go ahead—you don't know what?

A I don't know that it was those four men or any one of the four men—

Q All right—let's attack it this way: You know that the men on the two cranes came off the cranes when this electric welding—

A No, I don't know that. I know one crane.

[fol. 470] Q One crane—all right. Did the men come off one crane?

A Yes, sir.

Q And are these some of the men you saw around the electric welding machine?

A No, I was one of them.

Q You were one of them. And what about the—you were one of the two that came off the crane when the electric welding machine was running, is that correct?

A Yes.

Q And the electric welding machine was shut off?

A Yes, sir.

Q Now when the concrete pump machine was to come on the project site, and you told Chris Gunderson that this was the work of the Operating Engineers—you know, to assemble pipe, and what have you—and he said, "Okay, get me a man." You testified that you said, "Fine," and that you'd call the hall for a man—right?

(The witness nodded his head.)

MR. ARONSON: Don't shake your head—just say yes or no.

THE WITNESS: Well, he didn't finish.

Q (By Mr. Apruzzese) Well you've testified that he said—

TRIAL EXAMINER: To call the hall for a man and he came down the next day.

MR. APRUZZESE: Right.

[fol. 471] Q (By Mr. Apruzzese) So you called the hall for a man, correct?

A Yes.

TRIAL EXAMINER: Right. I'll answer. (laughter)

Q (By Mr. Apruzzese) Tell us why, Mr. Bonatz, you called the hall for one man, as opposed to more than one man, after you already said to Mr. Gunderson, "This requires more than one man"? Why did you call the hall for only one man?

MR. ARONSON: I object as to why.

TRIAL EXAMINER: Overruled. Why did you call for one man instead of two men?

THE WITNESS: Because I knew the situation of the job at that time—bringing in this one more man meant that the lead engineer would be on the job and my job would be easier.

TRIAL EXAMINER: You'd turn over the responsibility to him, is that the reason?

THE WITNESS: Absolutely, sir.

TRIAL EXAMINER: All right. You could duck out?

THE WITNESS: Yes.

Q (By Mr. Apruzzese) In other words, as the shop steward, you weren't concerned as to whether there was one, two, three—let the master mechanic worry about it?

A I didn't say that.

TRIAL EXAMINER: He didn't say that.

THE WITNESS: I didn't say that; you said that.

[fol. 472] Q (By Mr. Apruzzese) Well you said that if knew there was one more man on the pump, they would need a master mechanic, and then let him worry about it—isn't that so?

A Then I'd fight with the master mechanic.

Q I see. So that as shop steward, you felt that as long as there was one more man, then you'd get into this problem—and you'd fight with this master mechanic?

A Yes, sir.

Q I see. So is it your statement, Mr. Bonatz, as to your functions as a shop steward, if there is not a master mechanic on the job, then you complain to the contractor about what goes on; but if there is a master mechanic, then you complain to him?

A Yes, sir.

Q That's your normal procedure?

A As basic, yes—as a basic rule.

TRIAL EXAMINER: It's a good rule of thumb?

THE WITNESS: That's what I would say.

Q (By Mr. Apruzzese) Now who has the superior authority in terms of 825's normal operating procedure on a job, the shop steward or the master mechanic?

MR. ARONSON: I object as to who has superior authority. I don't know what that means.

TRIAL EXAMINER: Well I know what it means. I know who has superior authority to me—whom I am superior to in authority.

[fol. 473] THE WITNESS: You've got to single that out. You can't make that broad.

Q (By Mr. Apruzzese) Well you're on the job—you're a shop steward, right?

A Right.
TRIAL EXAMINER: You mean it might depend on who is the shop steward and who is the master mechanic?
THE WITNESS: No, it depends on the problem.
TRIAL EXAMINER: Oh, some come exclusively within your jurisdiction—
THE WITNESS: Right.
TRIAL EXAMINER: —and within the master mechanic's?
THE WITNESS: Right.
TRIAL EXAMINER: I understand that.
Q (By Mr. Apruzzese) All right, now, you were on the job as shop steward and Mr. Behrend was a lead engineer, correct, and so was Illario, correct?
A Yes.
TRIAL EXAMINER: Grievances came to you, is that right?
THE WITNESS: As a basic rule, yes.
TRIAL EXAMINER: And you would go to the mechanic with them, or would you go directly to the hall?
THE WITNESS: No, you don't go to the hall. You've got to take care of the problem here.
[fol. 474] TRIAL EXAMINER: Right. By taking care of the problem who would you go to first—the mechanic?
THE WITNESS: If it's a Poirier-McLane problem, I take it to Hank; if it's a CB & I problem, I take it to CB & I.
TRIAL EXAMINER: I understand that, yes.
THE WITNESS: If it's a trylon (phonetic) problem, I take it to the Trylon superintendent myself. If it's a White problem, I take it to Chris.
Q (By Mr. Apruzzese) All right, now what happens if there's a question as to whether or not the Engineers are satisfied with working conditions—and they might decide—some fellows might say, "Well, I want to leave the job," and some fellows might say, "I want to stay," and the lead engineer says, "Oh, no, you can't leave the job, you've got to stay"? Now—
MR. ARONSON: I object to this hypothetical question.
TRIAL EXAMINER: I'll sustain the objection.

Q (By Mr. Apruzzese) Well Mr. Bonatz, you said that after you fellows walked off the job—this is the second day, when you saw Mr. Willis—walked off the job—and you were in a luncheon counter; and Mr. Behrend came back, right? And he said "let's get on the job."

MR. ARONSON: I don't believe that that's the testimony, that Mr. Behrend came back.

TRIAL EXAMINER: It's something like that, if I [fol. 475] remember. I think he referred to—

MR. APRUZZESE: Well let's ask the witness.

Q (By Mr. Apruzzese) How did you find out whether or not you should return to the job site on that day you left, and you were only gone about four hours?

A I went on Hank's sayso.

Q All right. Hank said, "Get back on the job"?

TRIAL EXAMINER: He said, "Get the men back on the job."

Q (By Mr. Apruzzese) "Get the men back on the job," right?

A Right.

Q And you took his word and therefore got the men back on the job?

A As many as I could reach, yes.

TRIAL EXAMINER: To the best of your ability?

THE WITNESS: Yes, sir.

Q (By Mr. Apruzzese) Mr. Bonatz, did you, as shop steward, at anytime between the time that you had the meeting in the Poirier-McLane shanty and the day when the electric welding machine was operated, on or about November 4—anytime in between—did you as shop steward ever talk with any business agent of Local 825?

A Not that I can remember, no.

Q Did you ever attend any meetings in Newark about the Oyster Creek Project?

[fol. 476] MR. ARONSON: When?

MR. APRUZZESE: Between that period—

THE WITNESS: Between October when?

MR. APRUZZESE: Between October the 1st and November the 4th?

THE WITNESS: Not that I can remember.

Q (By Mr. Apruzzese) You might have?
A I might have; I don't remember.
Q And if you attended a meeting at Newark, it would have been at the offices of Local 825, would it not?
A Yes—that's the only place we have there.
Q Mr. Bonatz, on the day the concrete pump was on the job—that's on or about the 16th—you said, when Bodine came?
A Yes.
Q Now we've already had testimony—we know two other men came to the pump. Now did two other Operating Engineer men from Local 825 report to the project that day for employment on the cranes for White Construction?
A Not that I know of.
Q Not that you know of. Were you acting as shop steward on that date?
A At that time, yes.
Q Did you ever make a report to Local 825 about the events at the Oyster Creek Project between October—on or about October 1st and the first court proceeding that [fol. 477] was held on November 8th?
MR. ARONSON: I object—that's been asked and answered.
TRIAL EXAMINER: What?
MR. ARONSON: It's been asked and—
TRIAL EXAMINER: I never heard that question before.
MR. ARONSON: It was asked if he had any contact with anybody from Local 825—
TRIAL EXAMINER: If he made a report to anyone there—
MR. APRUZZESE: I asked if he made a report, and I asked the date of November 8th, which was the first District Court hearing.
Q (By Mr. Apruzzese) Did you ever make a report to Local 825 as to the events at the Oyster Creek Project?
TRIAL EXAMINER: In writing or orally?
MR. APRUZZESE: Yes, either.
THE WITNESS: There's a weekly job report but that doesn't have anything to do with the events.

Q (By Mr. Apruzzese) What does that have to do, with the number of men at the job only?

A The men, the machines, whether their dues is paid, and—

Q When you report—excuse me, Mr. Bonatz, when you report as to the machines on this job, do you report as to how the equipment is manned?

A Well more or less, yes.

Q In other words, when you send your report in to [fol. 478] the headquarters of 825, you tell them that the items—the items of equipment on the job and how they're manned, who the men are, isn't that so?

A Yes.

Q You do that weekly?

A Yes.

Q And you did that every week during the time between October the 1st and the date that the first Federal Court hearing was held, which was November the 8th? Let me make it easier for you: You did it weekly all the time that you were shop steward?

A Sometimes I missed.

Q Oh, sometimes you missed. Did you make reports to Local 825 between October the 1st and November the 4th?

MR. ARONSON: Mr. Trial Examiner, I don't see the relevancy of any reports—

MR. APRUZZESE: I think it's quite relevant. We've had an awful lot of testimony here about how ignorant all the representatives of Local 825 are as to what's happening on this job and this witness now testifies that as shop steward he's making weekly reports as to the type of equipment and how they're manned.

TRIAL EXAMINER: We haven't had any representative of Local 825 here to say he was ignorant, have we? There was no testimony that Local 825 was ignorant. [fol. 479] He'd have to be a representative of 825 to testify to that.

MR. APRUZZESE: Now we've had a lot of testimony asked of these people as to whether they spoke to any business agent about—

TRIAL EXAMINER: All right—so he sent in weekly reports. Now what?

MR. APRUZZESE: Well that's why I think it's relevant. I think the objection is improper.

TRIAL EXAMINER: Well what about the weekly report?

MR. ARONSON: We also have testimony that—

MR. APRUZZESE: The weekly report—the outstanding question is: Did you, Mr. Bonatz, send in any of these weekly reports between October the 1st and November—

TRIAL EXAMINER: He said yes, unless —

MR. APRUZZESE: —and November the 4th?

TRIAL EXAMINER: —unless he missed; unless he missed—he's human.

THE WITNESS: I don't remember what—whether that specific period was—we were rather busy at that time.

TRIAL EXAMINER: I've about reached my deadline —I mean, the time when I have to leave.

Q (By Mr. Apruzzese) When did you end up as shop steward on that job—what date?

TRIAL EXAMINER January, wasn't it?

THE WITNESS: January 25th, I believe.

[fol. 480] Q (By Mr. Apruzzese) And you—

A Of this year.

Q Yes—and you began as shop steward on that date.

A I told you—

TRIAL EXAMINER: Summer?

THE WITNESS: —in the beginning of the summer. The exact date, I cannot remember.

* * * *

[fol. 486] LAWRENCE E. DARICEK

a witness recalled to the stand, having been previously sworn, was examined and testified further as follows:

TRIAL EXAMINER: You've been a witness before in this proceeding, have you not?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: You're still under oath. Unless you care to have him sworn again—
MR. ARONSON: No, sir.

CROSS-EXAMINATION

Q (By Mr. Aronson) Mr. Daricek, are you still employed by Chicago Bridge and Iron?
A Yes, sir.
Q At the—
TRIAL EXAMINER: Just a minute—Daricek? Do [fol. 487] I have—I have a—
MR. APRUZZESE: It's spelled improperly in the record.
TRIAL EXAMINER: Oh, that's what I thought—oh, I see.
Q (By Mr. Aronson) That will be at the Forked River job site, sir?
A No, in Briarcliff Manor, New York.
Q In September and October, of 1965, sir, you were employed at the Forked River site?
A Yes, sir.
Q You were interviewed by the National Labor Board, were you not, sir, during the investigation of this case?
A Yes, sir.
Q And you gave them an affidavit?
A Yes, sir.
MR. ARONSON: Mr. Hannon, may I ask you to supply it?
TRIAL EXAMINER: Do you want a few minutes?
MR. ARONSON: Yes, sir.
TRIAL EXAMINER: We'll take a brief recess while the counsel reads the affidavit.

(Short recess.)

TRIAL EXAMINER: On the record.
Q (By Mr. Aronson) Mr. Daricek, on or about September 30th, you had heard some sort of a rumon that the operators on the job would not be working, is that correct?
A That's correct.
[fol. 488] Q Now you had a conversation with Mr. Bonatz about this?

A That's correct.

Q Now during that conversation isn't it a fact, sir, that Mr. Bonatz said to you that tge men had taken a vote?

A That's right.

Q And that the result of this vote—the men had decided that unless contracts were signed by White and Burns & Roe that the men would not work?

A That's right.

Q Now, Mr. Bonatz did not say that he had ordered the men not to work, did he, sir?

A No, he did not.

Q So that it was your understanding, after your conversation with Mr. Bonatz that the rumor you had heard was true?

A That's right.

Q Now what rumor had you heard?

A That the following day if all contractors on the job, including Burns & Roe and White Construction had not signed the contract with the Operating Engineers there would be no work.

Q Right. Now had you heard in this rumor that the men had taken a vote?

A I did, yes.

Q Who did you hear this rumor from, sir?

A Pardon?

[fol. 489] Q From whom did you hear this rumor?

A From Bill Bonatz.

Q Do I understand you to say, sir, that Bonatz had told you about this rumor and then you asked him if this was true at a later time?

A No, I misunderstood you on that. The rumor was around the job—the workingmen. And I went over to Bonatz to confirm it.

Q All right. Now did Mr. Bonatz or any other member of the Operating Engineers, or any officer of the Operating Engineers, ever tell you or demand of you or request that you stop doing business with White or with Burns & Roe?

A No.

Q All right. Now, during your conversation with Mr. Bonatz on the afternoon of October 1st—this would be the day that there was a work stoppage for some-four or five hours—does that refresh your recollection?

A 30th—the 1st—yes.

Q Now after there was a work stoppage for a period of four or five hours, did you thereafter have a conversation with Mr. Bonatz?

A By phone, yes.

Q Now during that conversation isn't it a fact that Mr. Bonatz said to you that he had heard the whole problem was settled and that the employees would be going back to work?

[fol. 490] A That's right.

Q Didn't he mention to you, sir, that there had been a vote at that time—

A No, he did not.

Q —for going back to work?

A No, he did not.

Q Now during your conversation with Mr. Bonatz on the afternoon of October 1st, he mentioned to you, did he not, sir, that he was trying to get in touch with Mr. Illario?

A That's right.

Q And he said that Mr. Illario was not at the site?

A That's right.

Q Did he at anytime thereafter tell you that he had gotten in touch with Mr. Illario?

A No.

Q Isn't it a fact, sir, that Mr. Illario did not return to work at the site on October the 1st?

A I did not see him that day.

Q Well he worked for you, did he not?

A He did.

Q Now were you present when Mr. Illario was laid off or did you have anything to do with Mr. Illario's layoff in the month of November, 1965?

A I laid off Mr. Illario when his job was finished, yes.

Q Would that be when his job was finished or when

[fol. 491] you had less than five Operating Engineers in your employ?

MR. HANNON: Objection, your Honor; I think he has gone beyond the scope of the direct. And I don't know what the purpose of it is—but it isn't relevant.

TRIAL EXAMINER: Well it's pretty hard for me to tell what the scope of the direct was. I'm going back to January. Let's proceed as quickly as we can.

MR. ARONSON: This will be quickly, sir.

TRIAL EXAMINER: Yes—I think so.

Q (By Mr. Aronson) When you laid Mr. Ilario off, was it because that you had less than five Engineers in your employ at the time?

A That's true.

* * * *

[fol. 492] DARRELL LANGLINAIS

a witness recalled to the stand, having been previously sworn, was examined and testified further as follows:

TRIAL EXAMINER: You have also testified, have you not?

THE WITNESS: Yes, I have.

TRIAL EXAMINER: All right, you are still under oath.

MR. ARONSON: (to Mr. Hannon) I'll take that, please.

TRIAL EXAMINER: Again, we will take a brief recess while counsel reads the pre-trial estatement, which was given to him by counsel for the General Counsel.

(Short recess.)

TRIAL EXAMINER: On the record. We will proceed.

CROSS-EXAMINATION

Q (By Mr. Aronson) Mr. Langlinais, in the months of October and November, 1965, you were employed by Chicago Bridge and Iron at the Forked River site, is that correct, sir?

A Yes, sir.

Q Now on or about October 8th, sir, you testified that you had a conversation with Mr. Bonatz at the job site, is—does that refresh your recollection?

A Yes, sir.

Q Now during this conversation, sir, isn't it a fact that Mr. Bonatz had told you that the employees had taken a vote, and as a result of that vote, the employees [fol. 493] decided they would not work unless White or Burns & Roe signed a contract, isn't that so?

A Well I don't recall that they said something about votes—but I do know that the people wouldn't work unless they had—I do remember that he said that they wouldn't work unless they got a contract.

TRIAL EXAMINER: You say you do not remember that he mentioned a vote?

THE WITNESS: Right, right.

Q (By Mr. Aronson) Well will you please tell us what Mr. Bonatz said and what you said to him and how the conversation occurred?

TRIAL EXAMINER: To the best of your recollection. I—

MR. ARONSON: Yes.

TRIAL EXAMINER: I realize it was quite a few months ago.

THE WITNESS: Well, as I recall, we exchanged pleasantries in the shanty, walked outside and started talking about why he wasn't working for me; that it was costing my company money for him not to be working. And he indicated that they had no quarrel with us but they would have to get an agreement with White, and/or, Burns & Roe—I think he just talked about Burns & Roe; he didn't say White—that they'd have to get an agreement with Burns & Roe before they started back to work. And I again said how much it was costing me. [fol. 494] And I don't remember now but I think we got on to the fact that there was a letter. He said there was a letter written by Burns & Roe to—instructing White to assign electric welding machine to the Ironworkers. I indicated to him at the time that I didn't believe there was such a letter and that I hadn't seen it and I still haven't seen it. I still don't think it exists.

TRIAL EXAMINER: You were not a party to the Joint Board or deliberation—is that correct?

THE WITNESS: No, sir.

TRIAL EXAMINER: It's Burns & Roe who brought it to the Joint Board. That's what I thought.

MR. APRUZZESE: That's right—and White Construction.

TRIAL EXAMINER: Oh, yes—and White—yes; thank you.

MR. ARONSON: I think it was Burns & Roe who sent the letter to the Joint Board.

TRIAL EXAMINER: Yes—it come back to me now.

Q (By Mr. Aronson) Now during your conversation with Mr. Bonatz on this occasion, isn't it a fact, sir, that Mr. Bonatz, in addition to what you have already testified to, said to you that the employees wouldn't work without a contract and at that time—meaning the time of your conversation—that it had absolutely nothing to do with the elecric welding machine?

A No, sir, he didn't say that.

Q What did he say about the electric welding machine at that time?

A Well I asked him—he didn't say anything about [fol. 495] the welding machine—I asked him was it because of the welding machine; and he said, "Well, that's part of it," or "that started it," or something to that effect.

Q And didn't he also say, sir, that that started it, but "at this time it's because we don't have a contract"? Now I'm not quoting exact words, but was not that the effect of the conversation?

A I don't really remember enough about it to—

Q Let me show you, sir, the affidavit that you gave to the Board. And I suggest that you read it over, and maybe we can refresh your recollection a little bit.

Let the record show that I handed the witness a copy of the statement supplied me by General Counsel.

(The witness then proceeded to silently read the document.)

Q (By Mr. Aronson) Does reading over the statement, sir, refresh your recollection in anyway with respect to your conversation?

A Would you repeat your question, please?

Q Let me rephrase it, if I may. Did Mr. Bonatz, at anytime during the conversation, say to you that any problem that existed at that time was a direct result of the welding machine?

A No, he did not.

Q As a matter of fact, wasn't your impression or understanding of Mr. Bonatz' statement during this conversation that you had with him, that the dispute at [fol. 496] that time was over the fact that there was no contract with Burns & Roe and White—or Burns & Roe?

A Well I can't answer that that way, sir, because it wasn't my impression.

Q Then you can't answer my question?

MR. APRUZZESE: Well, he has.

MR. HANNON: He has.

MR. APRUZZESE: He has answered it.

TRIAL EXAMINER: Is it material?

MR. APRUZZESE: He said that wasn't his impression.

THE WITNESS: That was not my impression.

TRIAL EXAMINER: I think what Bonatz said to him was important, but his impression might not be important. You might get the wrong impression from what someone said to you. I have done that myself, I know—usually to my regret.

Q (By Mr. Aronson) Mr. Langlinais, did anyone from Local 825, either a shop steward, a member, or an officer, ever tell you or order you or request that you, in behalf of Chicago Iron, stop doing business with White and Burns & Roe?

A No, sir.

* * * *

[fol. 498] ROBERT ILLARIO

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER: Be seated and give your name and address to the reporter, please.

[fol. 499] THE WITNESS: My name is Robert Illario, I-l-l-a-r-i-o. I live at 180 Central Avenue, Edison, New Jersey.

DIRECT EXAMINATION

Q (By Mr. Aronson) Mr. Illario, are you a member of Local 825, of the International Union of Operating Engineers?

A Yes.

Q How long have you been a member, sir?

A Eleven years.

Q Do you hold any office, business agent title in Local 825?

A No.

Q Let me direct your attention, sir, to the months of September, October, November, 1965. Were you employed by Chicago Bridge and Iron during those months?

A Yes.

Q And would that be at the Forked River job site?

A Yes.

Q And how long were you so employed? When did you start your employment there?

A I think around April or May, of '65; I'm not quite sure—with Chicago Bridge.

Q Now while working with Chicago Bridge, were you a lead engineer or a master mechanic, as those terms have been used in this proceeding?

A I was.

[fol. 500] Q And do you know when you because lead engineer or master mechanic?

A When I started for them. I don't know the exact date; it was around spring sometime.

Q All right. Now, did there come a time when you were laid off by Chicago Bridge and Iron?

A Yes.

Q And would that be sometime in the middle of November, 1965?

A That's correct.

Q And why were you laid off, sir?

A Well, we got down to four men and the superintendent laid me off.

Q Now, when you were laid off, what, if anything, did you then do?

A Well I knew of a job across the other side of the hole with White, so I went over there—

Q The what?

A The hole—a big hole. It was a big hole.

Q You mean a construction project?

A Yes; it was a hole 500 x 500.

Q All right.

A And I went over there to—

TRIAL EXAMINER: You moved from one job to the other job?

[fol. 501] THE WITNESS: Yes; right; correct.

Q (By Mr. Aronson) Now did you physically walk over there? Is that what happened?

A Yes—walked over there. I got paid from Chicago Bridge and walked over there.

TRIAL EXAMINER: Got on another payroll?

THE WITNESS: Yes.

Q (By Mr. Aronson) Now at the time, how many employees, Operating Engineers, did White have on its payroll?

A He had five men.

Q Was there a lead engineer there?

A No; not at the time.

Q Did you have a conversation with anybody from White?

A I talked to the superintendent.

Q Would that be Mr. Gunderson?

A Yes.

Q Now tell us what that conversation was, sir?

A Well, I explained to him that he had five men, and according to our agreement, he has to have a master mechanic.

Q What did he say?

A He said he would call his office and straighten it out, find out.

Q Now while you were there, sir, was there a concrete pump operating?

A There was.
[fol. 502] Q Did you see this pump?
A Yes.
TRIAL EXAMINER: Now let me ask one question right now about this concrete pump. This was never the subject of a jurisdictional award by the Joint Board, was it?
MR. ARONSON: Yes, it was.
TRIAL EXAMINER: It was?
MR. APRUZZESE: Yes, sir, it was.
TRIAL EXAMINER: It was? All right—that's what I wanted to know. I couldn't find it but I've gone through this very hurriedly (referring to transcript).
MR. HANNON: I think that's been put in by way of stipulation.
TRIAL EXAMINER: Oh—I understand.
MR. ARONSON: I don't remember if it was put in by way of stipulation.
TRIAL EXAMINER: But there was an award?
MR. ARONSON: There was an award.
TRIAL EXAMINER: To the Ironworkers?
MR. APRUZZESE: No, not on the concrete pump. The electric welding machine was awarded—
TRIAL EXAMINER: I know that.
MR. APRUZZESE: The concrete pump—the dispute alleged by the Engineers was that they had jurisdiction over assembling certain pipe and operating that—
[fol. 503] TRIAL EXAMINER: Which was done by the laborers?
MR. APRUZZESE: Right. —and operating a toggle switch.. This was all awarded by the laborers—to the laborers, rather—by the contractor, and the Joint Board upheld the assignment.
TRIAL EXAMINER: Now you cleared me up—because I didn't find that in the record.
MR. ARONSON: I believe the Joint Board's award is—was sometime after the facts—
MR. APRUZZESE: It was after this particular point in time that Mr. Illario is discussing.
TRIAL EXAMINER: Oh, yes.

Q (By Mr. Aronson) Now you testified, sir, that you saw the concrete pump?

A Yes, sir.

Q Did you have any discussion with Mr. Gunderson about this pump?

A Yes.

Q What was your discussion?

A I told Mr. Gunderson that we assemble and maintain and disassemble all the equipment that we run and that this pump—we would be better off with two more men on it.

Q Now at the time who was on the pump, if you know?

A Dave-something—I forget his name.

TRIAL EXAMINER: An Engineer?

THE WITNESS: Yes, he was an engineer; his name [fol. 504] was Dave-something.

Q (By Mr. Aronson) And were there any other non-Engineers working on the pump?

A Yes, the laborers.

Q Now what did Mr. Gunderson say—

TRIAL EXAMINER: Excuse me—were they working on the pump or were they working on the assembly of the line running from the pump?

THE WITNESS: They were working on the line from the pump.

TRIAL EXAMINER: That's what I thought.

Q (By Mr. Aronson) Now what did Mr. Gunderson say in this conversation that you had with him?

A Well he didn't say yes and he didn't say no. He just didn't say too much. He said, "I'll get ahold of my office," or something. And I said, "Okay."

Q And what did you then do, if anything?

A I told him—I said, "Well, we're going to have to bring two men in here to take care of this job." He says, he says to me, "Well, I have to pour concrete tomorrow." Now the laborers were assembling it. So I said, "Okay, Cris, I won't stop the laborers, because I know the concrete has got to go in. Let the laborers continue; we'll have two men here this afternoon and we'll take up from where they leave off." He said, "Swell, fine." I said, "Okay."

[fol. 505] Q Now what did you then do, if anything?
A I got ahold of the steward, I think, or something—got two men from the hall—somebody. A call went into the hall for a couple of men.
Q Now did the men come to the site that day?
A Yes, they did.
Q Were they put to work?
A No, they weren't.
Q Did you have any conversation with Mr. Gunderson about this?
A Yes, I told him the men were there and ready to go and he says he wasn't going to hire them.
TRIAL EXAMINER: At this time, an Engineer was still operating this pump, am I correct?
THE WITNESS: Yes, that's correct.
MR. APRUZZESE: Not operating it, Mr. Funke; but the pump was being assembled; that particular day it was not operated.
TRIAL EXAMINER: Oh, it was not working yet?
MR. APRUZZESE: Right.
THE WITNESS: The machine was working; the pipe wasn't in operation.
MR. APRUZZESE: But they weren't pumping concrete?
THE WITNESS: No, no—but the machine was working.
MR. APRUZZESE: Okay, then I stand corrected.
[fol. 506] Q (By Mr. Aronson) Now did Mr. Gunderson say why he wouldn't hire these two Engineers who came to the site?
A I don't recall; at this time, I don't recall.
Q Did Mr. Gunderson hire you as a master mechanic that day?
A Not that day; he kept stalling me off.
Q Well what did he say?
A He said, "Well, I have to hear from my office." I said, "All right."
Q Now did you report to work to the job site the following day?
A I did.
Q And to whom did you report?

A To White—Mr. Gunderson.

Q Did you have a conversation with him?

A He was still stalling me off—yes.

Q Well what did he say, sir?

A He said that they don't want to hire me so much.

TRIAL EXAMINER: Excuse me—the second day, did you not also bring two men with you?

MR. ARONSON: I'll get into that, sir.

TRIAL EXAMINER: Oh, all right—I'm sorry.

MR. ARONSON: I just want to get with him first.

TRIAL EXAMINER: Right.

Q (By Mr. Aronson) Did he say why they wouldn't hire you?

[fol. 507] A No, he just said they wouldn't hire me. He says that they had to get it straightened out.

Q Now did any Operating Engineers appear at the site that day?

A Yes.

Q To operate the pump?

A Yes.

Q How many?

A There was four.

Q Had you called the hall?

A I'm not sure if I called it the day before or the shop steward; somebody did.

Q Were four men supposed to appear that day?

A No, no.

Q Do you know what happened?

A Well, apparently they got their wires tangled up—

MR. APRUZZESE: I object to that; I'm afraid it's speculation.

TRIAL EXAMINER: Well, Mr. Apruzzese, four men showed up. What difference does it make if there was confusion at the hall and too many were sent or whatever did happen?

MR. APRUZZESE: Well the whole point in the case, your Honor, is that the contention of the charging party has been throughout that there was no confusion at all; they were sent deliberately. They allege confusion. So [fol. 508] therefore, I think it's important as to the basis for this man's knowledge.

TRIAL EXAMINER: If you're charging they were sent deliberately, then can't he state what he understood the situation to be?

MR. APRUZZESE: If he knows.

TRIAL EXAMINER: If he knows. If it's speculation, I'll disregard it as speculation. Let's proceed.

Q (By Mr. Aronson) How many halls does the union have?

A Three.

TRIAL EXAMINER: (to Mr. Apruzzese) Oh, I see your point; now I remember your point at this time.

THE WITNESS: The union has three halls.

Q (By Mr. Aronson) And where are those halls located?

A Newburgh, Newark and Hamilton, no—Hammonton.

Q That's Newburgh, New York?

A Newburgh, New York; Newark, New Jersey; and Hammonton, New Jersey.

TRIAL EXAMINER: 825 goes up to New York?

THE WITNESS: Yes—five counties in New York States—that's Newburgh.

Q (By Mr. Aronson) Now when the four Engineers appeared at the site, did you have any conversation with Mr. Gunderson about the four engineers being there?

A Well right now I don't recall if I did. If you're referring to when he asked me what they were doing [fol. 509] there, or something like that, I told him, I says, "I don't know; there's a little confusion there, but . . ." In jest, I told him, I says, "Let's put them on the crane." At the time the—

Q Now, at the time, Mr. Illario, was the crane operating?

A No, it wasn't.

Q What was wrong—what was the matter with it?

A It had—

MR. APRUZZESE: If he knows.

MR. HANNON: If he knows.

Q (By Mr. Aronson) If you know?

A Yes, I know what was the matter with it. It had points and plugs—it had problems in there, that the machine started and stopped and it just wouldn't start.

TRIAL EXAMINER: This is the crane?

THE WITNESS: Yes.

TRIAL EXAMINER: We're not talking about the pump anymore?

THE WITNESS: No, no.

Q (By Mr. Aronson) Now when you said to Mr. Gunderson that he put two more men on the crane, would if have been possible at that time for those two men to operate that crane?

A Well they wouldn't be able to operate it, but they could fix it. They were mechanics.

Q Now, you say "in jest"—what did Mr. Gunderson say when you said this?

A He didn't say nothing; he just walked away.

[fol. 510] Q Did he—

A He laughed.

Q Did he laugh?

A He laughed and walked away.

Q Did he say anything?

A Not that I recall.

Q Did you say to Mr. Gunderson at anytime during this conversation, or any—or at any other time—that the reason there were four men at that site was "more or less because of the electric welding machine"?

A Never; never.

Q During your conversation with Mr. Gunderson on the 16th of November—the one just—the one you just discussed—was the electric welding machine brought up by either of you?

A No.

Q On or about October 1st, there was a work stoppage at the site for approximately four or five hours, is that correct?

A Yes, sir.

Q Did you engage in that work stoppage in the morning?

A Yes, sir.

Q Now there has been some testimony that several Engineers returned to work sometime later in the day. Did you, sir?

A No, sir.

Q Did you—were you at the site during the afternoon of October 1st?

[fol. 511] A No, sir.

Q Where were you?

A I was in North Jersey.

Q Did anyone contact you—

A They called—

Q —and tell you to appear at the site?

A They called at my home but I wasn't there. My wife took the message. I received it that night.

TRIAL EXAMINER: Was this when they were rounding up the men?

MR. ARONSON: That's correct.

THE WITNESS: Yes.

Q (By Mr. Aronson) Did you, on October 1st, the day of the work stoppage that we've just been discussing, or at any other time, tell Mr. Willis that the reason the Engineers returned to work on October 1st was because Peter Weber had instructed them to and an agreement had been reached?

A No; I wasn't there.

Q Now, prior to this work stoppage, did you have any conversation with anyone from Burns & Roe regarding the signing of a contract?

A Yes, we brought the contract into Mr. Willis.

Q When you say "we," who is "we," sir?

A Me, Hank Behrend—

TRIAL EXAMINER: Behrend.

[fol. 512] THE WITNESS: Bonatz, I think maybe Gatti may have been there.

Q (By Mr. Aronson) That would be Joseph Gatti?

A Yes.

Q Where did you get the contract?

A Well, we carry them, we keep them.

Q Why do you do this?

A I have them in the car all the time.

Q Why?

A So I can refer to them.

Q Did anyone from Local 825, either an officer or a business agent, know at that time that you were intending to or did have a conversation with Mr. Willis about a contract?

MR. APRUZZESE: Objection. That question goes—

TRIAL EXAMINER: Goes beyond his own knowledge.

MR. APRUZZESE: That's right.

TRIAL EXAMINER: Sustained.

MR. ARONSON: I'll rephrase the question.

Q (By Mr. Aronson) Prior to the time that you went into Mr. Willis's office did you have a conversation with anyone from Local 825 concerning the fact that you were going to do this?

A Anyone?

Q Any official.

TRIAL EXAMINER: Well, three of them went in, [fol. 513] and they were all from Local 825 if I understand his testimony.

MR. ARONSON: Any official.

MR. APRUZZESE: Well, a shop steward is an official.

TRIAL EXAMINER: He means somebody from the Newark headquarters?

MR. ARONSON: That is correct.

THE WITNESS: No, we did not.

Q (By Mr. Aronson) Did anyone from the Newark headquarters of Local 825 order or instruct you to demand that Burns & Roe sign a contract?

A No.

Q Now when you went in to speak with Mr. Willis, what was said by you?

A I told Mr. Willis that since he had taken the position of general contractor on the job at this time, that the men had decided by vote that if he doesn't have a contract we are not going to work for him.

Q Now you say the men had decided by vote?

A That's right.

Q Were you there when the vote took place?

A I was.

Q Will you please tell us where it took place?
A It took place in the mechanics' shanty for Poirier & McLane, with every engineer on the job there attending.
Q And when was this? How soon before you went in [fol. 514] to speak with Mr. Willis?
A Oh, a day or two, I don't know.
Q What was said during this meeting of the men, and by whom, if you can recall?
A What was said by the meeting of the men?
Q During the meeting of the men, yes.
TRIAL EXAMINER: We have had testimony on all of this, right?
MR. HANNON: By two witnesses.
MR. ARONSON: If you feel it is cumulative—
TRIAL EXAMINER: I do.
MR. ARONSON: Then I'll withdraw the question.
TRIAL EXAMINER: I can remember it almost—well, not word for word, but certainly in substance.
MR. ARONSON: I'll withdraw the question.
TRIAL EXAMINER: Withdraw it on the fact that I have said the testimony would be cumulative.
Q (By Mr. Aronson) What did Mr. Willis say to you?
A At that time he says he would refer it to his office, and that was it.
TRIAL EXAMINER: This is when the three or possibly four of you went in?
THE WITNESS: Yes.
TRIAL EXAMINER: I'm not sure whether Gatti was there or not according to the record. I know that [fol. 515] three of you were there.
Q (By Mr. Aronson) Did you thereafter return to Mr. Willis's office and have a conversation with him about the contract?
A The next morning.
Q And who was there, if you can recall?
A I think me and Bonatz was there. Gatti might have been there, too, I don't know.
Q What was the conversation?
A I asked him what he had done about it, what Burns & Roe's position was. He says, "It is the same as

yesterday." So I asked him, "What do you mean?" He says, "Well, we didn't sign a contract." I said, "Okay."

Q And what did you do when you left?

A Just walked out. We went out, went into the parking lot, and told the men he didn't sign a contract.

Q And what, if anything, was said or done by the men?

A They just went.

TRIAL EXAMINER: They just went?

THE WITNESS: Yes, they left.

TRIAL EXAMINER: Went home?

THE WITNESS: Yes.

Q (By Mr. Aronson) Did you order or instruct the men to leave?

A No.

[fol. 516] TRIAL EXAMINER: Now is this the same situation in which there was a later recall of all the men by telephone, or is this a different situation?

MR. ARONSON: The same situation. This would be on the morning of October 1.

TRIAL EXAMINER: And around 2 o'clock in the afternoon there were telephone calls and a round-up—was the word I think was used to describe it?

MR. ARONSON: That's right.

Q (By Mr. Aronson) Now did you ever say to Mr. Willis that unless an operating engineer was assigned to the electric welding machine there would be no operating engineers on the job?

A No.

Q Did you ever have a conversation with Mr. Willis about the electric welding machine?

A Not with Mr. Willis.

MR. ARONSON: That's all I have.

CROSS EXAMINATION

Q (By Mr. Hannon) Mr. Illario, I want to refer back to the time that you were laid off by Chicago Bridge. Now when you are laid off a job don't you usually call the hall?

A Sometimes.

Q Didn't you call the hall in this case and didn't they send you over to the White job?

[fol. 517] A I don't recall. I think that I was right there on the job when I saw the people coming on. There was no reason for me actually—I don't recall. I'll tell you the truth.

Q You don't know whether you called the hall or not?

A I don't recall, no.

Q You might have called the hall?

MR. ARONSON: What's the difference?

TRIAL EXAMINER: I don't know that it makes any difference. He got the job over there. I don't care whether he called the hall or not. He may have known the job was open because he was right there at the site. There was no necessity to call the hall—or if he called the hall, so what?

Q (By Mr. Hannon) Once you get over there on the job and you talked to Gunderson about the concrete machine, didn't you, in fact, call the hall yourself to have the men sent down?

A I might have; I don't know.

Q Would it refresh your recollection to look at your statement—or, in fact, did you sign a statement on November 22nd, '65?

A I don't know—I might have—let me see it.

Q Will it refersh your recollection to look at it?

A Yes—where's it at—all right—called the hall for two men—I called the hall for two men. That's what it says.

Q You called the hall for the men?

[fol. 518] A Yes.

TRIAL EXAMINER: That's what he said.

Q (By Mr. Hannon) Now you also, in response to a question from Mr. Aronson, said that you usually keep contracts—copies of contracts in your car?

A Yes.

Q Did you get the contracts from the car on this occasion before you went in to see Mr. Willis?

A I'm not sure. I think they—we might have, the day before, we may have sent a fellow up to the hall to get contracts and bring them down. Now I'm not sure.

I don't really remember. I know we got the contracts from some place. I could take you to my car right now —it's in the parking lot—I've got a half-dozen of them there.

TRIAL EXAMINER: No, we won't go out.

MR. ARONSON: Not a bad idea.

Q (By Mr. Hannon) Do you remember on the morning that the concrete pump was to pour? You were on a job that morning and there were four men on the job. Now I refer you back to that particular morning. In response to a question from Mr. Aronson you said that White's crane was down that morning. How did you know White's crane was down that morning?

A Because Billy Bonatz told me. At the time, he thought I was the master mechanic. It's my duty to know things like that.

MR. HANNON: All right, I have nothing further.

CROSS-EXAMINATION

Q (By Mr. Apruzzese) Mr. Illario, in answer to a question by Mr. Aronson, you said that you didn't tell Mr. Willis that if there are no Engineers on the welding machine, there wouldn't be any men on the job. Now do you recollect that—

A Yes, just now I told him.

Q Did you ever, Mr. Illario, ever tell anyone on the job—Mr. Willis or Chris Gunderson, or any of the people who work for Burns & Roe or White, that unless there were Engineers on the welding machine that the Engineers would not work?

A No—I didn't have anything to do with White until November the 16th. I never bothered with Chris Gunderson.

Q You never told him anything?

A No, not that I recall.

Q I see. Now you've already testified you weren't on White Construction's payroll when you went over to speak to Chris but there was a concrete machine there. Now you were not on White's payroll, were you?

A That's right.

Q But on that occasion you did tell White that you should have Engineers on the concrete pump?
A Yes. I also told White that I should be the master mechanic.
Q Yes, I understand that. But you told him that he [fol. 520] should have two Engineers on the concrete pump?
A Right.
Q And you never told anyone at that project site that they should have Engineers on the electric welding machine?
A No. I didn't talk to White at that time.
Q All right. Even when you were master mechanic?
A Yes.
Q Mr. Illario, was there a time at the project—well, let me start from the beginning. Who was the first master mechanic on the job, if you know?
A Hank Behrend.
Q Did you come on as the second master mechanic?
A No; I came on as shop steward of the Engineers.
Q You came on as shop steward?
A Yes.
Q How long did your employment last as shop steward, do you recall?
A Well, it was in October until I went to Chicago Bridge.
Q In October of what year?
A '65.
Q '65?
A Yes.
Q And when did you go to Chicago Bridge?
A Like I say around April or May.
Q Of '66?
[fol. 521] A No, how does it go? No, that was of '64—and now we're into '65.
Q All right; all right. You came on the project as shop steward in '64?
A Yes, that's right.
Q And you worked as shop steward until what month?
A Until I got hired by Chicago Bridge. It might have been April, May; it could have been February. I forget what month it was.

Q All right. And at that time that you became master mechanic, how—there were how many master mechanics on the job?

A Two—me and Hank.

Q All right. Now, while you were shop steward on the job, representing all of the Engineers employed there for 825, did you ever ask Burns & Roe to sign a contract?

A No.

Q Never did.

TRIAL EXAMINER: Is that all?

MR. APRUZZESE: What's that, sir?

TRIAL EXAMINER: I asked if that was all.

MR. APRUZZESE: No, sir.

Q (By Mr. Apruzzese) As master mechanic, did you, on occasion, ask any employer to employ an Engineer on specific equipment because you didn't think it was manned properly?

[fol. 522] A When—

Q As master mechanic, when you were employed as master mechanic?

A When I was employed as master mechanic—

Q Yes—did you ask any employer at the site to employ one or two engineers because you didn't think that they were manning the equipment properly?

A Well I imagine I had many conversations with Larry over here, or Darrel, about manning of jobs—but normally, it was referred back to the steward. But we discussed it.

Q Now Mr. Illario, when you came to Mr. Gunderson to ask him to employ you as a master mechanic, after you were laid off by Chicago Bridge, do you recall Mr. Gunderson telling you that he did not require a master mechanic because one of the cranes had been shut down that morning and that the Engineers were being laid off—the two Engineers on the crane?

A No. He had five men on his payroll.

Q I asked the question—did you recall that that morning Mr. Gunderson said that one crane was not functioning and therefore he was laying off the two engineers—do you recall him saying that to you?

A No—not in the morning.

Q Did he say it to you anytime during that day?
A Yes, about quarter-after-four.
Q He told you that two Engineers were being laid off?
[fol. 523] A He told me they were laid off already.
Q I see. So that would give him three Engineers, isn't that so—
A I guess it would.
Q —if that crane were not used?
A I guess it would.
Q Did Mr. Gunderson tell you that that crane was not going to be used the following day?
A Mr. Gunderson told me that the crane couldn't do the job so he let it go and he was going to have a machine there to take its place, as soon as possible.
Q As soon as possible.
A And that was the same day.
Q Mr. Illario, these concrete pumps of the type that you knew that White was using on the Forked River job—they are fairly new in use, are they not?
A Well—
Q I mean, relatively speaking?
A They've been around awhile.
Q About a year or so, or two?
A I would say more than that.
Q More than that?
A Yes.
Q You worked on jobs with these pumps?
A No.
[fol. 524] Q You've never worked on jobs with these pumps?
A No.
Q So that you would never have any actual experience working on a job with this type of pump?
A I know the pump and the pump's operation.
Q Answer the question, please. You never had any experience working on a job with this type of pump, isn't that so?
A No, that's right.
Q Okay. Mr. Illario, I want to show you your sworn testimony before the Federal District Court—

(Mr. Apruzzese then proceeded to examine a transcript.)

MR. ARONSON: Shall we go off the record a moment?

TRIAL EXAMINER: Certainly.

(Discussion off the record.)

TRIAL EXAMINER: On the record.

MR. APRUZZESE: Strike that last question, please.

TRIAL EXAMINER: Whatever it was.

Q (By Mr. Apruzzese) Mr. Illario, do you remember giving a statement to the National Labor Relations Board?

A Yes.

Q I ask you to look at this document and ask you if you can identify it?

(A document was then handed to the witness.)

TRIAL EXAMINER: Is that the same one?

[fol. 525] MR. APRUZZESE: What's that, sir?

TRIAL EXAMINER: Is that the same document? One document, he has already identified.

MR. HANNON: Yes—it has already been shown to the witness.

MR. APRUZZESE: Well that's the same one.

Q (By Mr. Apruzzese) Is that your statement, Mr. Illario, that you gave to the National Labor Relations Board?

A Yes.

Q Mr. Illario, I just asked you on cross-examination if you had ever worked on a job with this equipment and you said no.

Now in your statement to the National Labor Relations Board, Mr. Illario, I refer you to—

TRIAL EXAMINER: The equipment we're referring to is the concrete pump.

MR. APRUZZESE: The concrete pump.

Q (By Mr. Apruzzese) I refer you to the fourth paragraph which reads as follows: "During the morning I noticed that White was using laborers or factory people to install the pipe-line from the Pumpcrete machine. I

told Chris that under conditions I have worked, we assemble, maintain and disassemble all the equipment, including the pipe-line."

Now I ask you, Mr. Illario, which statement is correct?

A The statement which is correct?

[fol. 526] Q Yes.

MR. ARONSON: Mr. Trial Examiner, Mr. Apruzzese's question, by its very nature, would require that one of the statements is correct. I don't believe that the question is—as asked—would require the answer that one of these statements is correct. They both could be correct. His statement necessarily implies that one isn't.

TRIAL EXAMINER: Offhand I don't see how they could both be correct.

MR. ARONSON: Well if Mr. Apruzzese would read the statement back again.

Q (By Mr. Apruzzese) All right, let's make sure that you understand the question. I'll start again, Mr. Illario. You testified that you never worked on a project with this type of a concrete machine, correct?

A Right.

Q Now, in your written statement that you gave to the Board you said: "During the morning I noticed that White was using laborers or factory people to install the pipe-line from the Pumpcrete machine. I told Chris that under conditions I have worked, we assemble, maintain and disassemble all the equipment, including the pipe-line."

A That's right.

TRIAL EXAMINER: Well I don't see how—

THE WITNESS: That's right.

[fol. 527] MR. APRUZZESE: Wait a second, if your Honor, please. That's his statement.

THE WITNESS: That's right.

Q (By Mr. Apruzzese) Now, under what—on what job have you worked—you say "I have worked"—"we assemble" the equipment, including the pipe-line"? Now are you talking about the pipe-line that goes to the concrete machine?

A Mr. Apruzzese, I made a statement—

Q Are you talking about the pipe-line—
A Yes, I am.
Q —that goes to the concrete machine?
A Yes, I am.
Q And you never worked on a project where there was a concrete machine, isn't that so?
A This statement says that "we assemble, maintain and disassemble all the equipment (we cover), including (this machine) (and its pipe-line)." Read the statement.
Q I read the statement. You said "under conditions I have worked."
A That's right.
Q And you have never worked under conditions where there was a concrete machine on the job, have you?
A Our agreement calls for us to operate this concrete machine.
Q Answer the question, Mr. Illario.
[fol. 528] MR. ARONSON: I think he has, Mr. Trial Examiner.
TRIAL EXAMINER: I think he answered that he never did work on that, but also that he knew what the contract required. I don't know what this is proving.
THE WITNESS: That's a piece of our machinery.
TRIAL EXAMINER: Yes.
THE WITNESS: All I said is that we assemble, maintain and disassemble the equipment that we cover.
Q (By Mr. Apruzzese) Including the pipe-line?
A Including the Pumpcrete machine.
Q But you have never worked under those conditions prior to this? You never worked at a job site prior to this?
A With the Pumpcrete machine?
Q Right.
A No.

• • • •

[fol. 529] MR. HANNON: Mr. Trial Examiner, there are first a couple of things that I would like to get out of the way—possibly one by stipulation. There have been a number of comments in the record—I think they were actually introduced on cross-examination—about a Mr. Norton. And he has been referred to as being with the

Ironworkers, and so forth and so on. But I would like to get a stipulation as to just who Mr. Norton is.

MR. ARONSON: Mr. Norton—I just left, after being with him for a whole week—is the president—I'm sorry—is the business manager of Local 350, Ironwork-
[fol. 530] ers, which are located in Atlantic City, New Jersey.

TRIAL EXAMINER: Is the stipulation agreeable?

MR. HANNON: Is is agreeable.

MR. APRUZZESE: Yes, sir.

• • • •

Form NLRB-508 (2-60)

Form Approved
Budget Bureau No. 64-R003.11

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Do Not Write in This Space
Case No. 4-CC-359
Date Filed 10/8/65

INSTRUCTIONS: *File an original and 3 copies of this charge and an additional copy for each organization, each local an each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.*

1. Labor Organization or Its Agents Against Which Charge Is Brought

   Name
   Local No. 825, International Union of Operating Engineers, AFL-CIO
   4 Fleming Avenue, Newark, New Jersey

   Address
   4 Fleming Avenue, Newark, New Jersey

The Above-Named Organization(s) or Its Agents Has (Have) Engaged in and Is (Are) Engaging in Unfair Labor Practices Within the Meaning of Section 8(b) Subsection(s) (4) (i) (ii) (B) of the National Labor Re-

(List subsections)

lations Act, and These Unfair Labor Practices Are Unfair Labor Practices Affecting Commerce Within the Meaning of the Act.

2. Basis of the Charge *(Be specific as to facts, names, addresses, plants involved, dates, places, etc.)*

   On or about September 29, 1965 and at all times thereafter the above named labor organization, through its agents did engage in and/or did induce

and encourage individuals employed by White Construction Co., Inc., 305 East 45th Street, New York, New York; Poirier & McLane Corporation, 33 West 42nd Street, New York, New York; and Chicago Bridge & Iron Company, 119 Long Avenue, Hillside, New Jersey, to engage in a strike or refusal in the course of their employment to use, manufacture, process, transport or otherwise handle any goods, articles, materials, or commodities or to perform any services and on or about September 29, 1965 and at all times thereafter the above named labor organization through its agents has threatened, coerced and restrained said White Construction, Co., Inc.; Poirier & McLane; Chicago Bridge & Iron Company and other persons engaged in commerce or in an industry affecting commerce all with an object of forcing or requiring said White Construction Co., Inc.; Poirier & McLane; and Chicago Bridge & Iron Company, to cease using, selling, handling, transporting or otherwise dealing in the products of and/or to cease doing business with Burns & Roe, Inc., 160 West Broadway, New York, New York.

(See Attached)

3. Name of Employer
   Burns & Roe, Inc.

4. Location of Plant Involved *(Street, City and State)*
   Oyster Creek Project, Forked River, New Jersey

5. Type of Establishment *(Factory, mine, wholesaler, etc.)*
   Nuclear Energy Plant

6. Identify Principal Product or Service
   Construction

7. No. of Workers Employed
   348

8. Full Name of Party Filing Charge
   Burns & Roe, Inc.

9. Address of Party Filing Charge *(Street, City, and State)*
c/o Apruzzese & McDermott
1180 Raymond Boulevard, Newark, New Jersey 07102

10. Tel. No.
624-9292

11. Declaration

I Declare That I Have Read the Above Charge and That the Statements Therein Are True to the Best of My Knowledge and Belief.

By /s/ Vincent J. Apruzzese
(Signature of representative or person making charge)

VINCENT J. APRUZZESE
Apruzzese & McDermott,
Counsel for Burns & Roe, Inc.
(Title or office, if any)

October 7, 1965
(Date)

Wilfully False Statements on This Charge Can Be Punished By Fine and Imprisonment (U. S. Code, Title 13, Section 1001)

2. Continued

On or about September 29, 1965 and at all times thereafter the above named labor organization, through its agents did engage in and/or did induce and encourage individuals employed by Poirier & McLane Corporation, 33 West 42nd Street, New York, New York and Chicago Bridge & Iron Company, 119 Long Avenue, Hillside, New Jersey, to engage in a strike or refusal in the course of their employment to use, manufacture, process, transport or otherwise handle any goods, articles, materials or commodities or to perform any services and on or about September 29, 1965 and at all times thereafter the above named labor organization through its agents has threatened, coerced and restrained said Poirier & McLane and Chicago Bridge & Iron Company, and other persons engaged in commerce or in an industry affecting commerce all with an object of forcing or requiring said Poirer & McLane and Chicago Bridge & Iron Company to cease using, selling, handling, transporting or otherwise dealing in the products of and/or to cease doing business with Burns & Roe, Inc., 160 West Broadway, New York, New York, in order to have Burns & Roe, Inc. cease using, selling, handling, transporting or otherwise dealing in the products of and/or to cease doing business with White Construction Co., Inc., 305 East 45th Street, New York, New York.

/s/ V. J. A.

Form NLRB-508 (2-60)

Form Approved
Budget Bureau No. 64-R003.11

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Do Not Write in This Space
Case No. 4-CD-144
Date Filed 11/5/65

INSTRUCTIONS: *File an original and 3 copies of this charge and an additional copy for each organization, each local an each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.*

1. Labor Organization or Its Agents Against Which Charge Is Brought

   Name
   Local Union No. 825, International Union of Operating Engineers, AFL-CIO

   Address *(Street, City, State and ZIP Code)*
   4 Fleming Avenue, Newark, New Jersey

The Above-Named Organization(s) or Its Agents Has (Have) Engaged in and Is (Are) Engaging in Unfair Labor Practices Within the Meaning of Section 8(b) Subsection(s) (4)(i)(ii)(D) of the National Labor Re-

(List subsections)

lations Act, and These Unfair Labor Practices Are Unfair Labor Practices Affecting Commerce Within the Meaning of the Act.

2. Basis of the Charge *(Be specific as to facts, names, addresses, plants involved, dates, places, etc.)*

   On or about September 20, 1965 and at all times thereafter the above named labor organization, through its agents did engage in and/or did induce and encourage individuals employed by White Con-

struction Co., Inc., 305 East 45th Street, New York, New York, to engage in a strike or refusal in the course of their employment to use, manufacture, process, transport or otherwise handle any goods, articles, materials, or commodities or to perform any services and on or about September 20, 1965 and at all times thereafter the above named labor organization through its agents has threatened, coerced and restrained said White Construction Co., Inc., and other persons engaged in commerce or an industry affecting commerce all with an object of forcing or requiring said White Construction Co., Inc., to assign the work of operating electric welding machines to Operating Engineer employees represented by Local No. 825, International Union of Operating Engineers, AFL-CIO, rather than to Ironworker employees represented by Local Union No. 350, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO, at its Oyster Creek Project in Forked River, New Jersey.

3. Name of Employer
White Construction Co., Inc.

4. Location of Plant Involved *(Street, City, State, and ZIP Code)*
Oyster Creek Project, Forked River, New Jersey

5. Type of Establishment *(Factory, mine, wholesaler, etc.)*
Nuclear Energy Plant

6. Identify Principal Product or Service
Construction

7. No. of Workers Employed
White—42; Project Total—371

8. Full Name of Party Filing Charge
White Construction Co., Inc.

9. Address of Party Filing Charge *(Street, City, State, and ZIP Code)*
c/o Apruzzese & McDermott
1180 Raymond Boulevard, Newark, New Jersey 07102

10. Tel. No.
624-9292

11. Declaration

I Declare That I Have Read the Above Charge and That the Statements Therein Are True to the Best of My Knowledge and Belief.

By /s/ Vincent J. Apruzzese
(Signature of representative or person making charge)

VINCENT J. APRUZZESE
Apruzzese & McDermott,
Counsel for White
Construction Co., Inc.
(Title or office, if any)

November 4, 1965
(Date)

Wilfully False Statements on This Charge Can Be Punished By Fine and Imprisonment (U. S. Code, Title 13, Section 1001)

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

Case No. 4-CC-359

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

and

BURNS & ROE, INC.

Case No. 4-CD-144

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

and

WHITE CONSTRUCTION COMPANY

ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

It having been charged by Burns & Roe, Inc., herein called Burns & Roe, and White Construction Company, herein called White, that Local No. 825, International Union of Operating Engineers, AFL-CIO, herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Section 151, *et seq.*, herein called the Act, and

The undersigned having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act and to avoid unnecessary costs or delay,

IT IS HEREBY ORDERED, pursuant to Section 102-.33(b) of the Board's Rules and Regulations, Series 8, as amended, that the above-captioned cases be, and they hereby are, consolidated, and

Pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, The General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Regional Director for the Fourth Region, hereby issues this Consolidated Complaint and Notice of Hearing and alleges as follows:

1. (a) A copy of the charge filed by Burns & Roe in Case No. 4-CC-359 was served on Respondent by registered mail (No. 778002) on October 11, 1965.

(b) A copy of the charge filed by White in Case No. 4-CD-144 was served on Respondent by registered mail (No. 778015) on November 8, 1965.

2. (a) Burns & Roe, a New Jersey Corporation, whose principal place of business is located at New York, New York, at all times material herein has been engaged as engineering constructor at the Jersey Central Power & Light Co., Oyster Creek Nuclear Power plant, Ocean County, New Jersey, herein called the Oyster Creek job. In the course of the construction of the Oyster Creek job, Burns & Roe purchased materials valued at in excess of $50,000 from points outside the State of New Jersey.

(b) White, a New York corporation whose principal place of business is located at New York, New York, at all times material herein, has been engaged as constructor of a reactor building at the Oyster Creek Job. During the past calendar year, in the course of the construction of the aforesaid Oyster Creek Job and other jobs within the State of New Jersey, White purchased materials valued at in excess of $50,000 from points outside the State of New Jersey.

(c) At all times material herein, White, Poirier & McLane Corporation, herein called Poirier, and Chicago Bridge & Iron Co., herein called Chicago, have been engaged in the construction of the Oyster Creek Job as subcontractors of Burns & Roe.

(d) Burns & Roe and White are, and have been at all times material herein each employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. (a) Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

(b) Local Union No. 350, International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO, herein called Ironworkers, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

4. At all times material herein, William Bonatz, Respondent's job steward; Ray Shinn, Respondent's business agent, and Peter Weber, Respondent's business manager have acted as agents of Respondent.

5. (a) Since on or about the week of September 20, 1965 Respondent has demanded that White assign the work of starting and stopping the electrical welding machine on the Oyster Creek job to employees who are members of, or represented by Respondent rather than to employees who are members of, or represented by Ironworkers.

(b) On or about September 27, 1965, White assigned the work of starting and stopping the electric welding machine at the Oyster Creek job to employees who are members of, or represented by Ironworkers.

6. Respondent engaged in the following conduct at the Oyster Creek jobsite:

(a) On or about September 29 and 30, 1965, Respondent told Burns & Roe that unless Burns & Roe signed an agreement with Respondent, employees represented by Respondent would cease work for the various subcontractors employing operating engineers on the job.

(b) On or about September 30, 1965, Respondent warned Chicago that if Respondent did not get a contract with Burns & Roe and with White, that the employees represented by Respondent, as described in subparagraph (a), above, would not work on the following morning on the job.

(c) On or about October 1, 1965, Respondent caused the aforesaid employees it represents at the Oyster Creek job to engage in a work stoppage at that job that lasted for about four hours.

(d) On or about October 6, 1965, Respondent warned Burns & Roe that unless Burns & Roe and White signed contracts with Respondent, and unless White assigned an employee represented by Respondent to the electric welding machine, none of the aforesaid employees represented by Respondent would work on the following day on the job.

(e) On or about October 7, 1965, Respondent caused employees it represents at the Oyster Creek job to engage in a work stoppage at that job that lasted until October 12, 1965.

(f) On or about October 26, 1965 Respondent told White that it would have problems on the Oyster Creek job and elsewhere if the electric welding equipment work was not assigned to Respondent.

(g) On or about November 4 and 5, 1965, after an employee represented by the Ironworkers started the electrical welding machine, Respondent caused White's operating engineer employees to cease work at the Oyster Creek job.

7. (a) An object of the acts and conduct of Respondent, set forth in paragraphs 6(b), (c) and (e), above, was and is to force or require Chicago, Poirier and White to cease using, selling, handling, transporting, or otherwise dealing in the products of, and to cease doing business with Burns & Roe.

(b) An object of the acts and conduct of Respondent set forth in paragraphs 6(b), (c), (d) and (e) above (except as to White), was and is to force or require Burns & Roe to cease using, handling, transporting, or otherwise dealing in the products of, and to cease doing business with White.

(c) An object of the acts and conduct engaged in by Respondent, set forth in paragraphs 6(c), (d), (e), (f) and (g) above, is and has been to force or require White to assign the work described in paragraph 5, above, to employees who are members of, or represented by, Respondent rather than to employees who are members of, or represented by Ironworkers.

(d) White is not failing to conform, and has not failed to conform, to an order or certification of the Board determining the bargaining representative for employees performing the work referred to in paragraph 5, above.

8. (a) On or about October 6, 1965, the dispute as to the assignment of the work described in paragraph 5(a) and (b) was submitted to the National Joint Board for the Settlement of Jurisdictional Dispuites, herein called the Joint Board. At all times material herein, Respondent, Ironworkers and White have been bound by the procedures of the Joint Board in connection with the aforesaid work assignment dispute.

(b) On or about October 19, 1965, the Joint Board determined that there was no basis to change the contractor assignment made by White. Respondent thereafter engaged in the conduct described above in paragraphs 6(f) and (g).

(c) At all times material herein, the aforesaid dispute has not been adjusted in accordance with the Joint Board procedures and award.

9. By the acts described in paragraphs 6(c) and (e) above, in connection with the allegations set forth in paragraphs 7(a) and (b) above, and by each of said acts, respondent did engage in, and is engaging in, and did induce and encourage, and is inducing and encouraging, individuals employed by persons engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform services, and by the acts described above in paragraphs 6(b), (c), (d) and (e) in connection with the allegations set forth above in paragraphs 7(a) and (b), and by each of said acts, Respondent did threaten, coerce and restrain, and is threatening, coercing and restraining, persons engaged in commerce or in an industry affecting commerce, where in either case an object thereof is forcing or requiring persons to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor

or manufacturer, or to cease doing business with other persons, and Respondent thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i)(ii)(B) of the Act.

10. By the acts described in paragraphs 6(c), (e) and (g) above, in connection with the allegations set forth in paragraphs 5, 7(c) and 8, above, and by each of said acts, Respondent did engage in, and is engaging in, and did induce and encourage, and is inducing and encouraging, individuals employed by persons engaged in commerce or in an industry affecting commerce to engage in, a strike or refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform services, and by the acts described above in paragraphs 6(b), (c), (d), (e), (f) and (g), in connection with the allegations set forth in paragraph 5, 7(c) and 8, above, and by each of said acts, Respondent did threaten, coerce and restrain, and is threatening, coercing and restraining, persons engaged in commerce or in an industry affecting commerce, where in either case an object thereof is forcing or requiring an employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class, rather than to employees in another labor organization or in another trade, craft or class where such employer is not failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work, and Respondent thereby did engage in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(4)(i)(ii)(D) of the Act.

11. The activities of Respondent described in paragraphs 4 through 10, above, occurring in connection with the operations of Burns & Roe and White described in paragraph 2 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

12. The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Sections 8(b)(4)(i)(ii)(3), 8(b)(4)(i)(ii)(D) and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 7th day of December, 1965 at eleven o'clock in the forenoon, Eastern Standard Time in the hearing room of the National Labor Relations Board, 1700 Bankers Securities Building, Juniper and Walnut Streets, Philadelphia, Pennsylvania a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Consolidated Complaint within ten (10) days from the service thereof and that unless it does so, all of the allegations in the Consolidated Complaint shall be deemed to be admitted to be true and may be so found by the Board.

Dated at Philadelphia, Pennsylvania this 17th day of November, 1965.

/s/ Bernard Samoff
BERNARD SAMOFF
Regional Director
for the Fourth Region
National Labor Relations Board

EXHIBIT No. GC-4

WHEREAS, Local 825, International Union of Operating Engineers, AFL-CIO, is presently engaged in negotiations with the Associated General Contractors of New Jersey for a new collective bargaining agreement to be effective as of July 1, 1965, and

WHEREAS, it has been the past practice of said Local Union 825, upon the consummation of said agreement, to demand from individual contractors who are not members of the Associated General Contractors of New Jersey a collective bargaining agreement containing hours, wages and conditions of employment as set forth in the bargaining agreement between the Union and the Associated General Contractors of New Jersey, and

WHEREAS, the undersigned Employer is now desirous of continuing contractual relationship with Local 825 and hereby expresses his willingness to execute an agreement with the said Local Union 825 which will contain all the provisions of the Agreement when consummated between Local 825 and the Associated General Contractors of New Jersey, it is hereby agreed:

1) The Union shall extend its existing contract with the undersigned and all of the terms and conditions thereof shall remain in effect until such time as the said Local 825 and the Associated General Contractors of New Jersey have entered into a new collective bargaining agreement.
2) When such new collective bargaining agreement is entered into between said Local 825 and the Associated General Contractors of New Jersey, a new contract shall be proferred to the undersigned containing the same provisions and the undersigned agrees to accept and execute the same retroactive to July 1, 1965.

In witness whereof, the parties make and enter into this Agreement and we, their duly authorized and empowered representatives have hereunto set our hands and seals this _____ day of _____ 1965.

INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL
UNIONS 825, 825A, 825B
AND 825C

_____

PETER W. WEBER
President and
Business Manager

_____

HENRY J. LEGOWSKI
Recording Secretary

_____
Company Name

_____
Signature

_____
Signature

_____
Street Address or PO Box

_____
City Zone State

AGREEMENT

This AGREEMENT entered into by and between ___

---

hereinafter referred to as the "Employer," and the International Union of Operating Engineers, Local Union 825, 825A, 825B, 825C, hereinafter referred to as the "Union."

This Agreement shall bind all sub-contractors while working for an Employer who is a party to this Agreement. Any Employer who sublets any of his work must sublet the same subject to all the terms and conditions of this Agreement.

The Employer agrees that he will not subcontract any of his work, which is covered by the terms of this Collective Bargaining Agreement, to any subcontractor, unless said subcontractor agrees in writing to perform said work subject to all terms and conditions of this Agreement between the Employer and the Union, including an agreement to submit work jurisdictional disputes for determination as provided below.

The parties hereto agree to make all assignment of work covered by this collective bargaining agreement to the employees covered hereunder. In making the assignment of work, the Employer shall make said assignment in accordance with any established decisions and/or agreements of record set forth in the "Green Book" or in any official book published by the National Joint Board for the Settlement of Jurisdictional Disputes. Where, however, there are no established Decisions or Agreements of record, as described above, relative to jurisdictional work disputes and a jurisdictional work dispute arises wherein this union is involved with any other craft and any employer or such employer's sub-contractor, the employer or sub-contractor involved shall assign the work in accordance with the last known decision rendered by the National Joint Board of Awards within the territorial jurisdiction covered by this Agreement. Where there are no decisions by the National Joint Board covering similar or same types of disputes in this jurisdiction, the Employer will make the assignment of work in ac-

cordance with area past practice and custom. Any party feeling aggrieved relative to the assignment of work in the manner herein specified, may file with the National Joint Board of Awards for a job decision, which job decision shall be binding on all parties involved. In the event any Employer does not comply with the provisions of this Article, it shall be considered a breach of this collective bargaining agreement and the union shall have the option to call for a work stoppage.

The Union agrees that it will not enter into an agreement with any other contractors engaged in this type of work within the area designated herein upon more favorable terms to such other contractors than embodied in this agreement.

The Employer recognizes the Union as the sole exclusive bargaining agent for all the employees engaged in the operation of power equipment as herein specified in schedules attached and made a part hereof, used in the construction, alteration and repair of buildings, structures, bridges, bridge approaches, viaducts, shafts, tunnels, subways, foundations, street, highway work, sewer, sewage disposal plants, filtering plants and incinerators, piers, docks, dams, dredging, port works, river and harbor improvements, pipelines, pipeline water crossings, temporary pipe fittings, sinking of wellpoints, all piping in connection with wellpoints, burning and welding, installing, repairing and maintaining of all equpment, fitting up, dismantling, repairing and maintaining and operating of machinery when done on the job and such other work as by custom has been performed by workmen under the supervision of the Lead or Foreman Engineer.

This Agreement shall govern rates of pay, hours and working conditions on all phases of construction work indicated herein within the State of New Jersey and the five southern counties of New York (Delaware, Ulster, Orange, Sullivan, and Rockland).

ARTICLE I

MANNING OF JOBS

In the employment of workmen covered by this Agreement, the following provisions shall govern:

1. The Union shall establish and maintain an open employment list for the employment of workmen. Such list shall be established and maintained on a non-discriminatory basis and shall not be based on, or in any way affected by union membership, by-laws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies or requirements.

2. Whenever desiring to employ workmen, the Employer shall call upon the Union or its agent for any such workmen as the Employer may, from time to time, need and the Union or its Agent shall refer such workmen from the open employment list. The Employer shall give the Union twenty-four (24) hours' notice when requiring the services of an Engineer, Apprentice Engineer, Fireman or Maintenance Engineer.

3. The Employer shall retain the absolute and unconditional right to reject any workmen referred by the Union.

4. The Union, in referring workmen, shall give consideration to and shall be governed by the following criteria, which shall be applied in a non-discriminatory manner, as provided for in (1) above:

(a) Recent employment by a particular Employer now desiring to re-employ the same workman provided he is available;

(b) Length of prior employment with any Employer party to this Agreement;

(c) Competency and experience in the performance of the particular tasks involved in the job to which referral is being made;

(d) Age, insofar as it affects the physical ability to perform the tasks involved in the job to which referral is being made;

(e) An applicant must have maintained his permanent residence in the geographical area of the entire

State of New Jersey and the five southern counties of New York (Delaware, Ulster, Orange, Sullivan and Rockland), for a period of one (1) year or, who having had a permanent home in the area, has temporarily left with the intention of returning to this area as his permanent home.

5. Any workman on the employment list who makes written claim that he has been discriminated against in violation of his rights under the Labor Management Relations Act of 1947 as amended by exclusion from a job referral shall have the right to an immediate appeal to a Joint Board consisting of two (2) members of the Union and two (2) members of the Associated General Contractors of the State of New Jersey, who shall be respectively designated upon the signing of this Agreement. Voting by members of the Joint Board shall be on a unit basis. In case the Joint Board fails to reach a unanimous decision, the claim shall be submitted expeditiously to an impartial umpire to be agreed upon by the Joint Board herein created whose decision shall be binding and conclusive.

The claim of any Registrant who feels that he has been discriminated against must be filed in writing with the Union within ten (10) days from the date of the alleged discriminatory practice, in order to entitle him to the benefits of the Appeal procedure hereinbefore set forth.

6. The cost and expense of establishing and maintaining the open list and of the referrals therefrom shall be borne by all of the registrants thereon. In the case of registrants who are not members of the Union, their share of such cost and expenses shall not exceed a sum equal to the pro rata share of the cost and expense of operating the employment list and the referrals therefrom which is being borne by members of the Union from the payment of Union dues. After seven (7) days from the date of this Agreement or of the date of registry on the list, whichever is later, registrants shall incur the obligation of making quarterly payments of their share of such cost and expenses. Failure of a registrant to make payment of such cost and expenses shall constitute

grounds for removal from such list and shall nullify any prior referral therefrom.

7. The parties to this Agreement shall post in places where notices to employees and applicants for employment are customarily posted, all of this Article I, MANNING OF JOBS.

ARTICLE II

WORKING CONDITIONS PERTAINING TO ALL PHASES AND TYPES OF CONSTRUCTION WORK

1. STRAIGHT TIME: Eight hours per day, forty hours per week, Monday to Friday inclusive, shall prevail except at start and finish of job when said employees shall be paid on unit basis of one day unless otherwise specified herein.

2. SHIFT WORK: Where jobs are being operated on a two or three shift basis, the second and third shifts shall be paid at the regular rate plus $14.00 per week or any part thereof for all classifications except Oilers and Firemen who will receive $10.00 per week, or for any part thereof.

On six (6) or seven (7) day shift work, on a twenty-four hour basis, instead of three (3) shifts working eight (8) hours each, it will be permissible to work four (4) shifts of six (6) hours each, and the differential normally paid to the second and third 8 hour shifts, shall be divided equally between the second, third and fourth shifts.

Whenever there is a skip in shifts and work is not performed on a consecutive shift basis, no differential pay shall apply to the shift or shifts following the skip. Double time shall apply.

Shift pay differential is not applicable to tunnel, subway, or bridge alteration or resurfacing work; Double time shall apply for all work after 4:30 P.M.

3. CALL OUT PAY: Employees ordered out to work by the Employer and not permitted to work shall be paid the straight time rate as follows: Monday to Friday—8 hours' pay; Saturday—4 hours' pay; Sunday—8 hours' pay; Holiday—8 hours' pay plus Holiday pay.

4. TEMPORARY LAY-OFF: Employees temporarily laid off and re-employed within five working days shall be paid for day or days preceding their re-employment.

5. MANNING REQUIREMENTS:

(a) Where two small mixers of less than ½ yard capacity (without loading device attached) are operated on a job on any one day, an Engineer will be required to operate said mixers.

(b) Where a mixer of less than ½ yard capacity, without loading device attached thereto, and one small pump or two small pumps are used upon a job in any one day, the services of an Engineer will be required to operate them.

(c) An Engineer must be employed on each mixer having a capacity of ½ yard or more whether equipped with a loader device or not.

(d) An Apprentice Engineer, Oiler or Fireman shall be employed on all power cranes, shovels, locomotives, paving mixers, back hoes, derricks, truck cranes, draglines, elevator graders and on any other machine where the services of the said Apprentice Engineer, Oiler or Fireman are necessary; including carrying of gas.

(e) Where a gas or diesel driven crane with a steam boiler, gasoline or diesel driven compressor attached thereto furnishes power for any work other than the driving of piles, then an Oiler shall be employed in addition to two Engineers.

(f) Barge Equipment: Whenever a crawler or a stiff-leg derrick or whirley is mounted on a barge, there shall be two Engineers employed to operate this equipment and any other equipment that has been installed on the barge such as air compressors, pumps, boilers, generators and welding machines. Said Engineers are to take care of the duties ordinarily performed by the Oilers on such machines.

(g) Pumps, Mixers and Hoists: Where an Engineer employed on this equipment works three consecutive days or any fraction thereof, he shall receive

three days' pay; if he works the fourth day, he shall be paid for the full week. It is expressly understood that Article II, Section 4 applies hereto.

(h) Multiple Welding System (Rectifier Transformer type): Two Engineers shall man each Rectifier having fifty (50) leads.

(i) Working Hours: 8:00 A.M. to 12:00 Noon and from 12:30 P.M. to 4:30 P.M. unless by mutual agreement with the other crafts, when the working hours shall be from 8:00 A.M. to 12:00 Noon and from 1:00 P.M. to 5:00 P.M. All time prior to 8:00 A.M. and after regular quitting time worked, including noon hour mealtime, shall be paid for at the overtime rate applicable.

On Highway, Road, Street and Sewer Construction, the Employer shall designate the starting time for employees hereunder, at which time pay shall commence including waiting time; and the eight hours per day shall commence from such designated starting time.

(j) Where the Employer obtains power from a permanent or temporary plant, i.e., steam, compressed air, hydraulic or other power, for the operating of any machine or automatic tools, or for the purpose of furnishing temporary heat for heating material or to buildings under course of construction or used in the construction of new buildings, additions, alterations, or repairs thereto; employees covered hereunder shall man and operate such permanent or temporary plant from which source of power is supplied. In the event that the Employer is unable to arrange this, Engineers shall man all valves or other outlets of such source of power as is used by the Employer and shall be paid the rate of wages applicable to the classification of work in which he is employed.

(k) Steam Time: It is understood and agreed that Engineers, Apprentice Engineers or Firemen getting up steam before regular starting time, shall receive one hour's pay at time and one-half rate.

(l) Temporary Heating Plants, Wellpoint Systems or Pumps: Where a Temporary Heating Plant, Wellpoints or Pump is working three (3) shifts, seven (7) days a week, of fifty-six (56) hours, shall include time and one-half for the first eight (8) hours over the forty (40) hours and double time for the second eight (8) hours over the forty (40) hours, in accordance with the schedules of rates attached hereto.

6. LEAD ENGINEER, FOREMAN ENGINEER OR SAFETY ENGINEER:

(a) It is further agreed that where there are five or more employees covered by this Agreement employed upon any one job or by any one contractor, a Lead Engineer, Foreman Engineer or Safety Engineer shall be employed.

He shall be responsible for the performance of all duties of Engineers, Apprentice Engineers, Repair Mechanics, Oilers, Firemen, Maintenance Engineers, and other employees under his jurisdiction under the direction of the Employer.

He will not be allowed to operate an Engine, only in the temporary absence of the regular engineer. He shall have complete supervision over all repairs made on all machines and other automotive equipment used, when such repairs are done on the job.

(b) Where a job is of sufficient size to require eventually five or more employees covered hereunder, the first engineer operating equipment classified to receive the highes wage rate provided for herein (currently $5.70 per hour) employed on the job shall act as a Lead Engineer, shall continue to operate his equipment and shall receive the wage rate provided for herein for a Lead Engineer as long as he acts as such.

7. On all machines with Booms of 100 feet and over (including jib) two (2) Engineers shall be employed at the regular rate of wages or one (1) Engineer and one

(1) Apprentice Engineer shall be employed. Said Engineer to receive regular hourly rate plus:

50¢ per hour on rigs with 100′ Boom (including jib) up to 139′.
75¢ per hour on rigs with 140′ Boom (including jib) and over.

On all hoists where "Cat Head" is 100 feet or over above ground level, the same differential pay and manning provisions shall apply as applicable to Booms 100 feet and over.

8. WAGES: Shall be paid in currency weekly on the job where men are employed on or before quitting time on Friday afternoon. If discharged for any reason during the week, the men shall be paid at once and are entitled to full wages until paid. Where proper arrangements cannot be made to pay in currency, employees may be paid by check, subject to the approval of the Union.

9. SAFETY: All provisions of the Engineers License Law of the State of New Jersey shall be enforced.

(a) Employees while on the job shall be protected from either falling material, acid fumes, or anything detrimental to life or health. A first aid kit shall be provided and kept available for use at all times on the job. Employees while on the job shall be protected from inclement weather.
(b) Employees shall not be required to operate unsafe or defective operating equipment.

10. Business Agent or Representative of the Union shall have access to the work at all times during working hours.

(a) Shop Steward shall have access to the Superintendent on the job at all times for the purpose of notifying the Employer of any violation of the terms of this agreement and any disputes or grievances with respect thereto and shall be permitted to present such grievances, violations, and disputes during regular working hours.

11. HOLIDAYS: Recongnized paid Holidays are: New Year's Day, Washington's Birthday, Decoration Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day, Presidential Election Day, or days celebrated as such. Holidays falling on Saturday will be recognized as a paid Holiday. Employees working the day before the Holiday shall be paid for said Holiday.

12. OVERTIME: Double time rate shall apply to hours worked over eight (8) hours per day and Holidays, with the exception of overtime work on grade separations, overpasses, underpasses, bridges, airports, highway, road, street and sewer construction, pipelines, street grading, drainage, curb setting, sidewalks, grade separations excepting structures, grading and all work related thereto which shall be paid for at one and one-half the straight time rate and for all work over eight (8) hours and Saturday except Sunday and Holiday work will be paid at the double time rate. When working overtime at the same time on bridge work with other crafts who receive double time for said overtime, then employees covered hereunder shall also be paid double time, otherwise time and one-half. All water crossings pertaining to pipeline work are in the Heavy Construction category and said conditions and rates will apply thereto.

(a) Where Saturdays, Sundays or Holidays (or days celebrated as such) are worked, the employees covered by this Agreement shall be paid on a unit basis of one day at the specified overtime rates.

All and similar type:

Back Hoes (All types, including all combination hoe-loaders)
Central Power Plants (all types)
Concrete Paving Machines
Cranes (All types, including overhead)
Derricks (Land or Floating)
Draglines
Elevator Graders
Front End Loaders (5 yds. and over)
Gradalls
Mucking Machines
Pavers (21E and over)
Shovels
Trench Machines
And**

EFFECTIVE

7-1-62	7-1-63	7-1-64
$228.00 per wk. of forty (40) hrs. Straight Time ($5.70 per hr.)	$238.00 per wk. of forty (40) hrs. Straight Time ($5.95 per hr.)	$248.00 per wk. of forty (40) hrs. Straight Time ($6.20 per hr.)

All and similar type:

"A" Frames
Air Compressors (2 or 3 in Battery)
Boring and Drilling Machines
Cableways
Carryalls
Cherry Pickers—Austin Western (and similar type machines)
Economobiles (Hilo, Lull, Hyster and all similar type machines)
Hoist, Chicago Boom Type
Fork Lifts
Front End Loaders (2 yds. but less than 5 yds.)
Heater Plainer
Multiple Welding System (Rectifier transformer type)
Pans—LeTourneau DW's—Ukes
Pumpcrete Machine (regardless of size)
Pumpcrete—unit type
Scrapers—Le Tourneau—DW's—Ukes
Side Booms
Winch Trucks (Hoisting)
Welding Machines (gasoline or electric converters of any type, 2 or 3 in battery)
And**

EFFECTIVE

7-1-62	7-1-63	7-1-64
$206.00 per wk. of forty (40) hrs. Straight Time ($5.15 per hr.)	$214.00 per wk. of forty (40) hrs. Straight Time ($5.35 per hr.)	$222.00 per wk. of forty (40) hrs. Straight Time ($5.55 per hr.)

All and similar type:

Elevators (Freight or Passenger)
Hoists* (except Chicago Boom type)
House Cars*** (where used for hoisting building material, furniture or office equipment, permanent or temporary)
And**

*All type hoists shall also include steam, gas, diesel, electric, air, hydraulic, single and double drum, concrete, brick shaft caisson, conveyor, tugger and house cars or any other similar type hoisting machines portable or stationary. (See ***)

NOTE: Where a mixer of less than ½ yard capacity operates in conjunction with a hoist, or any type hoisting equipment, add $10.00 per week or any part thereof.

EFFECTIVE

7-1-62	7-1-63	7-1-64
$198.00 per wk. of forty (40) hrs. Straight Time ($4.95 per hr.)	$206.00 per wk. of forty (40) hrs. Straight Time ($5.15 per hr.)	$214.00 per wk. of forty (40) hrs. Straight Time ($5.35 per hr.)

**Any and all "dual purpose" trucks used on the construction job site or in the loading or unloading of materials, at the construction job site or in conjunction with the job site. This does not include trucks covered by the 1910 agreement between the Operating Engineers and the Teamsters.

***An Engineer shall be employed on all Elevators or Hoists (freight or passenger) where used for hoisting building material, also furniture or office equipment, or tools and equipment for any other craft.

All and similar type:
Air Compressors, (single)
Asphalt Spreaders
Asphalt Plant Engineer
Bar Bending Machines (Power)
Batchers
Belt Conveyor Systems
Boilers and Steam Jennies (Irrespective of their use)
Boom Type Skimmer Machines
Car Dumpers (Railroad)
Compressor and blower type units, used independently or mounted on dual purpose trucks, on job site or in conjunction with job site, in loading and unloading of concrete, cement, fly ash, instantcrete, or similar type materials.
Concrete breaking machines
Concrete Finishing Machines
Concrete Pump
Concrete Spreaders —Hetzel—Rexomatic and similar type machines
Conveyors
Crushing Machines
Dope Pots (Mechanical) with or without pump
Dumpsters
Front End Loaders (under 2 yards)
Generators
Giraffe Grinders
Graders and Motor Patrols
Gunnite Machines (excluding nozzle)
Heaters (Nelson or other type including propane)
Hoppers,
Hopper doors, power operated.
Locomotives
Mixers (except paving)
Motor Patrols and Graders
Pavers (Under 21E)
Pitch Pump
Plaster Pump (regardless of size)
Post Hole Diggers
Pumps, Diesel Engine, hydraulic (immaterial of power)
Pumps (4 inch suction or more)
Pumps (2 of less than 4 inch suction)
Pipe Bending Machines (Power)
Rollers—High grade finish
Rod Bending Machines (Power)
Steam Jennies and Boilers (irrespective of their use)
Silos
Scales, Power
Seaman Pulverizing Machine
Temporary Heating Plant
Vibrating plants (used in connection with unloading)
Welding Machine (gasoline or electric converter of any type, single)
Wellpoint Systems (including installation and maintenance)
And**

Maintenance of: All and similar types.
Concrete Finishing Machines
Concrete Vibrators
Gas Buggies
Levelling Machines
Portable Generators
Power Saws

Compressor equipment or compressor units used in connection with cement, paint, insulating and accoustical sprays and plaster and curing and sand blasting.

EFFECTIVE

7-1-62	7-1-63	7-1-64
$186.00 per wk. of forty (40) hrs. Straight Time ($4.65 per hr.)	$192.00 per wk. of forty (40) hrs. Straight Time ($4.80 per hr.)	$198.00 per wk. of forty (40) hrs. Straight Time ($4.95 per hr.)

All and similar type:
Brooms and Sweepers
Bulldozers (D8 and over)
Stone Spreaders
Sweepers and Brooms
Sprinkler and water trucks used on job site or in conjunction with job site.
Tractors (D8 and over)
Water and sprinkler trucks used on job site or in conjunction with job site.
And**

EFFECTIVE

7-1-62	7-1-63	7-1-64
$177.20 per wk. of forty (40) hrs. Straight Time ($4.43 per hr.)	$183.20 per wk. of forty (40) hrs. Straight Time ($4.58 per hr.)	$190.00 per wk. of forty (40) hrs. Straight Time ($4.75 per hr.)

**Any and all "dual purpose" trucks used on the construction job site or in the loading or unloading of materials, at the construction job site or in conjunction with the job site. This does not include trucks covered by the 1910 agreement between the Operating Engineers and the Teamsters.

All and similar type:
"A" Frames
Cranes
Cherry Pickers
Derricks (land or floating)

Elevators, permanent or temporary or any other Hoisting Machine regardless of motor power

Fork Lifts
Hoists
House Cars
Side Booms
And**

EFFECTIVE		
7-1-61	7-1-62	7-1-63
$218.00 per wk. of forty (40) hrs. Straight Time ($5.45 per hr.)	$228.00 per wk. of forty (40) hrs. Straight Time ($5.70 per hr.)	$238.00 per wk. of forty (40) hrs. Straight Time ($5.95 per hr.)

All and similar type:
Air Compressors (2 or 3 in Battery) and**

EFFECTIVE		
7-1-61	7-1-62	7-1-63
$208.00 per wk. of forty (40) hrs. Straight Time ($5.20 per hr.)	$216.00 per wk. of forty (40) hrs. Straight Time ($5.40 per hr.)	$222.00 per wk. of forty (40) hrs. Straight Time ($5.55 per hr.)

All and similar type:
Air Compressors (single) and**

EFFECTIVE		
7-1-61	7-1-62	7-1-63
$184.00 per wk. of forty (40) hrs. Straight Time ($4.60 per hr.)	$192.00 per wk. of forty (40) hrs. Straight Time ($4.80 per hr.)	$198.00 per wk. of forty (40) hrs. Straight Time ($4.95 per hr.)

All and similar type:
Welding Machines—gasoline or electric converters of any type—2 or 3 in battery multiple welders—and**

EFFECTIVE		
7-1-61	7-1-62	7-1-63
$208.00 per wk. of forty (40) hrs. Straight Time ($5.20 per hr.)	$216.00 per wk. of forty (40) hrs. Straight Time ($5.40 per hr.)	$222.00 per wk. of forty (40) hrs. Straight Time ($5.55 per hr.)

All and similar type:
Welding Machine—gasoline or electric converter of any type (single)—and**

EFFECTIVE		
7-1-61	7-1-62	7-1-63
$184.00 per wk. of forty (40) hrs. Straight Time ($4.60 per hr.)	$192.00 per wk. of forty (40) hrs. Straight Time ($4.80 per hr.)	$198.00 per wk. of forty (40) hrs. Straight Time ($4.95 per hr.)

336

Firemen

EFFECTIVE		
7-1-61	7-1-62	7-1-63
$167.00 per wk. of forty (40) hrs. Straight Time ($4.17½ per hr.)	$173.00 per wk. of forty (40) hrs. Straight Time ($4.32½ per hr.)	$179.00 per wk. of forty (40) hrs. Straight Time ($4.47½ per hr.)

**and any and all "dual purpose" trucks used on the construction job site or in the loading or unloading of materials, at the construction job site or in conjunction with the job site.

EXHIBIT No. GC-5

NATIONAL JOINT BOARD FOR SETTLEMENT OF
JURISDICTIONAL DISPUTES
BUILDING AND CONSTRUCTION INDUSTRY

815 Sixteenth Street, N. W., Washington, D. C. 20006

STerling 3-6817

October 1, 1965

In Reply Refer to:
N J 10/165

J H LYONS, General President
International Association of Bridge
Structural and Ornamental Iron Workers
300 Continental Building
St. Louis 8, Missouri

HUNTER P WHARTON, General President
International Union of Operating Engineers
1000 Connecticut Avenue N W
Washington, D C

Gentlemen:

The following telegram, dated October 1, 1965, has been received from Burns and Roe, Inc.:

"Jurisdictional dispute exists at Oyster Creek project Forked River New Jersey, general contractor Burns and Roe Inc., subcontractor White Construction Co Inc. 305 East 45th Street New York over assignment of electrical welding machine for welding steel. Subcontractor assigned operation to Iron Workers pursuant to green book decision. Pior to assignment Engineers claimed starting and stopping of this equipment and threatened that unless an Engineer was assigned Engineers would cease to work for sub and walk off project. After assignment made Engineers did walk off project and Engineers for all contractors now off job site. Urge your immediate good

offices to have Engineers return to work as soon as possible. Job decision will be requested. Submission to follow."

President Wharton is requested to direct the local union to return to work immediately in accordance with contractor's assignment.

Both international unions are requested to adjust this jurisdictional dispute directly. Please advise.

Very truly yours,

WILLIAM J COUR
Chairman

WJC/lma

cc: C J HAGGERTY—B&CT DEPT
E T KELLY—AGC

BURNS AND ROE INC—Contr.—160 W. Broadway, New York, N.Y.

WHITE CONSTRUCTION CO INC—Subcontr.—305 E. 45th St., N.Y.

VINCENT J APRUZZESE, ESQ.—1180 Raymond Blvd., Newark, NJ.

EXHIBIT No. GC-7

NATIONAL JOINT BOARD FOR SETTLEMENT OF
JURISDICTIONAL DISPUTES
BUILDING AND CONSTRUCTION INDUSTRY

8815 Sixteenth Street, N. W., Washington, D. C. 20006

STerling 3-6817

October 20, 1965

In Reply Refer to:
N J 10/1965

J H LYONS, General President
International Association of Bridge
Structural and Ornamental Iron Workers
300 Continental Building
St. Louis 8, Missouri

HUNTER P WHARTON, General President
International Union of Operating Engineers
Washington, D C

BURNS & ROE INC
Contractor
160 West Broadway
New York, New York

WHITE CONSTRUCTION COMPANY
Subcontractor
305 East 45th Street
New York, New York

Gentlemen:

At its meeting October 19, 1965, the Joint Board considered the jurisdictional dispute between the International Union of Operating Engineers and the International Association of Bridge Structural and Ornamental Oron Workers over operation of electric welding machines, Oyster Creek job, Forked River, New Jersey, Burns and Roe Inc. contractor, White Construction Company, subcontractor.

The Joint Board considered the evidence presented and voted that there is no basis to change the contractor's assignment.

This action of the Joint Board was predicated upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only.

Very truly yours,

WILLIAM J COUR
Chairman

WJC/ima

cc: C J HAGGERTY—B&CT DEPT
E T KELLY—AGC
V J APRUZZESE, ESQ.
1180 Raymond Boulevard, Newark, New Jersey 07102

EXHIBIT No. GC-9

WHITE CONSTRUCTION CO., INC.
Builders
305 East 45th Street • New York 17, New York
Telephone: LExington 2-4571

[EMBLEM]

Subject: W. O. 2299
Jersey Central Power & Light Co.
Oyster Creek Project
Specific Work Assignment

September 27, 1965

T. J. Norton, Business Agent
Local Union No. 350
Bridge, Structural, Ornamental
& Reinforcing Iron Workers &
Machinery Movers
448 North Dover Avenue
Atlantic City, New Jersey

Dear Mr. Norton:

We wish to advise you of the following specific work assignment:

SPECIFIC WORK ASSIGNMENT
to
IRONWORKERS

In accordance with the Rules and Procedures of the "National Joint Board" the following specific work assignment is made to all Ironworkers performing work with an electric welding set on this project.

This work assignment is made in accordance with the "Decision of Record" covering electric welding. The "Decision" is printed on Page 114 of the "Green Book".

ASSIGNMENT

Each Ironworker shall "plug in" and "unplug" his own welding set whether it be to a motor driven "Electric

Generator" or to a central electric "Rectifier" apparatur for all electric welding operations. Each man shall set the control for the required amperage for the work being performed, and shall lay his own line to his assigned work place, giving due care and consideration for other workmen in the area.

The turning on and turning off of the motor driven generator or beehive or central rectifier system is also assigned to the Ironworker except if other crafts use the same equipment; then the first craft required to use the welding equipment shall turn it on and the last craft using it shall turn it off.

Very truly yours

WHITE CONSTRUCTION CO., INC.

/s/ Chris Gunderson
C. Gunderson
Superintendent

EXHIBIT No. GC-11

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil No. 1165-65

BERNARD SAMOFF, Regional Director of the Fourth Region of the National Labor Relations Board, for and on behalf of the NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, RESPONDENT

ORDER GRANTING TEMPORARY INJUNCTION

This order came on to be heard upon the verified petition of Bernard Samoff, Regional Director of the Fourth Region of the National Labor Relations Board, for and on behalf of said Board, for a temporary injunction pursuant to Section 10(1) of the National Labor Relations Act, as amended, pending the final disposition of the matters involved pending before said Board, and upon the issuance of an order to show cause why injunctive relief should not be granted as prayed in said petition. The Court, upon consideration of the pleadings and with the agreement of the parties on the below Order and the further agreement that Respondent will not engage in activity in violation of Section 8(b)(i)(ii)(D) in order to force or require White or any other employer at the Oyster Creek job site to assign the work of starting and stopping electrical welding equipment (of the type described in the National Joint Board award of October 19, 1965) to employees represented by Respondent rather than employees represented by any other labor organization, trade, craft or class,

ORDERS, ADJUDGES AND DECREES that, pending the final disposition of the matters involved pending before the National Labor Relations Board, respondent,

Local 825, International Union of Operating Engineers, AFL-CIO, its officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with them, be, and they hereby are, enjoined and restrained from:

(a) In any manner or by any means, including picketing, orders, directions, instructions, requests, or appeals, however given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engaging in, or inducing or encouraging any individual employed by White, Poirier, Chicago, or by any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any service, or in any manner or by any means, threatening, coercing or restraining White, Poirier, Chicago, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require White, Poirier, Chicago, or any other person to cease using, selling, handling, transporting, or otherwise dealing in the products of Burns & Roe, or to cease doing business with Burns and Roe.

(b) In any manner or by any means, including picketing, orders, directions, instructions, requests or appeals, however given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engaging in, or inducing or encouraging any individual employed by Poirier, Chicago or by any other person engaged in commerce or in an industry affecting commerce, to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service, or in any manner or by any means, threatening, coercing or restraining Poirier, Chicago, Burns & Roe, or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Burns & Roe or any other

person to cease using, selling, handling, transporting or otherwise dealing in the products of White, or to cease doing business with White.

(c) In any manner or by any means, including picketing, orders, directions, instructions, requests, or appeals, however given, made or imparted, or by any like or related acts or conduct, or by permitting any such to remain in existence or effect, engaging in, or inducing or encouraging any indivdual employed by White, or by any other employer engaged or to be engaged at the Oyster Creek job site, to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any service or in any manner or by any means, threatening, coercing or restraining White or any other employer engages or to be engaged at the Oyster Creek job site, with an object of forcing or requiring White or any other employer engaged or to be engaged at the Oyster Creek job site, to assign the work of starting and stopping electrical welding equipment (of the type described in the National Joint Board award of October 19, 1965) to employees represented by respondent rather than employees represented by any other labor organization, trade, craft or class.

Done at Trenton, New Jersey, this 8th day of November, 1965.

/s/ ARTHUR S. LANE
United States District Judge

I hereby certify that the foregoing is a TRUE COPY of the original on file in my office.

MICHAEL KELLER, JR.
Clerk

Per /s/ J. Walter Morse
Deputy

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 17180

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, RESPONDENT,

BURNS AND ROE, INC., AND WHITE CONSTRUCTION COMPANY, INTERVENORS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Argued December 5, 1968

Before: HASTIE, *Chief Judge* and KALODNER, *Circuit Judge.*

OPINION OF THE COURT

(Filed April 25, 1969)

By HASTIE, *Chief Judge.*

This case is before us on a petition of the National Labor Relations Board for enforcement of a cease and desist order based upon the Board's finding that the respondent, Local 825, International Union of Operating Engineers, violated section 158(b)(4)(D) of the National

Labor Relations Act, 29 U.S.C. § 158(b)(4)(D), by coercing White Construction Co., an employer, with the object of compelling White to assign the starting and stopping of an electric welding machine to operating engineers represented by Local 825 rather than to the ironworkers who used the machine and were represented by Ironworkers Local 350. The Board also found that in connection with the same controversy Local 825 had violated section 8(b)(4)(B) of the Act by conduct in the nature of a secondary boycott against other employers in an effort to compel them to cease doing business with White. This conduct also was interdicted by the cease and desist order.

The Board's factual findings relevant to the alleged section 8(b)(4)(D) violation are adequately supported by the record. It appears that White undertook as a subcontractor to construct the reactor building for a projected nuclear power plant. In the course of the job White assigned to its ironworker employees the work of starting and stopping an electric welding machine that they used in welding structural steel. At that time White had no contract with Local 825 though White's work force included two members of that union, an engineer and an oiler who operated a crane.

At this juncture a representative of Local 825 demanded that White employ a member of that Union to push the buttons that started and stopped the welding machine. When White failed to comply and to sign an agreement giving Local 825 jurisdiction that would include electric welding machines, the crane engineer and oiler stopped work for one day. More prolonged work stoppages by the engineers occurred during the ensuing weeks. The Board found the union responsible for these work stoppages and the record fully supports that conclusion.

Both Local 825 and the Ironworkers' Union were obligated by contract with the Building Trades Employers' Association to recognize the jurisdiction of the National Joint Board for the Settlement of Jurisdictional Disputes and "to be bound by all decisions and awards" made by that body in exercise of its agreed jurisdiction. Accord-

ingly, the matter of the work claimed by Local 825 in connection with the use of electric welding equipment was referred to the Joint Board. That Board issued an award confirming White's assignment of the work in question to the ironworkers.

Although in its answer to the complaint in this case Local 825 admitted that it was bound, as its contract with the Employers' Association provided, by the award of the Joint Board, it refused to respect the award when it was made. Rather, it persisted in its demand that the disputed work be assigned to operating engineers and in its coercive tactics to enforce that demand. This unfair labor practice proceeding followed.

The union asserts two principal defenses; first, that there was no such claim by the ironworkers to the work in question as would create a jurisdictional dispute; and second, that the present unfair labor practice decision is invalid because it was not preceded by and grounded upon a Board award of the claimed work to a particular craft in a section 10(k) proceeding, 29 U.S.C. § 160(k).

The contention that there were no conflicting claims creating a jurisdictional dispute is without merit. The employer's original assignment of ironworkers to start and stop the electric welding machines they were to use may well have been made routinely without any demand by those employees or their union. However, they did accept this work as an incident of their job. This entire dispute grows out of that work assignment and its acceptance.

More important, the Ironworkers Union and the Union of Operating Engineers were opposing parties in the ensuing proceeding before the Joint Board to determine which craft should perform the work in question. The Ironworkers prevailed, thereby establishing their right to the work under the procedure agreed to by all of the parties. Thereafter, ironworkers performed the work as a matter of established right. And they have not disclaimed that right. In these circumstances, it is specious to argue that the persisting demand of the operating engineers that the work be assigned to them does not create a jurisdictional dispute. *Cf. N.L.R.B.* v. *Local*

1291 *International Longshoremen's Ass'n* 3d Cir. 1966, 368 F.2d 107; *N.L.R.B.* v. *Local 25, International Brotherhood of Electrical Workers*, 2d Cir. 1967, 383 F.2d 449. "The fact that one union has the jobs and holds on to them in a polite, non-belligerant manner while the other union uses the forbidden tactics in an effort to get them, or some of them, does not mean that what Congress regarded as the evils of a jurisdictional dispute are not present." *International Brotherhood of Carpenters* v. *C. J. Montag & Sons, Inc.*, 9th Cir. 1964, 335 F.2d 216, 221.

The respondent's second contention is that this unfair labor practice proceeding is premature because the Board did not first utilize a proceeding under section 10(k) of the Act to make a decisive award of the work to one craft or the other.[1]

In most cases a Board award under section 10(k) and a refusal to abide by that award must precede an unfair labor practice proceeding based on a jurisdictional dispute. *N.L.R.B.* v. *Radio and Television Broadcast Engineers, Local 1212 (C.B.S.)*, 1961, 364 U.S. 573; *N.L.R.B.* v. *United Ass'n of Journeymen*, 3d Cir. 1957, 242 F.2d 722. However, we agree with the Board that in the circumstances of this case a section 10(k) proceeding was not necessary. That section reads as follows:

> "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of Section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such

[1] Whether this contention should fail here because it was not advanced before the Board, we do not decide.

voluntary adjustment of the dispute, such charge shall be dismissed."

It will be observed that the statute expressly provides for the discontinuance of a section 10(k) proceeding where the parties show that they have "agreed upon methods for the voluntary adjustment of the dispute". The present parties had agreed in advance upon a method of voluntary adjustment and did in fact utilize that method in this case. We cannot believe that Congress intended to require a section 10(k) proceeding after a binding voluntary settlement of a dispute when the legislative scheme provides for the discontinuance of a section 10(k) proceeding if such an adjustment shall occur during its pendency. *Wood, Wire and Metal Lathers Union (Acoustical Contractors)*, 1958, 119 N.L.R.B. 1345, cited with approval, *Carey* v. *Westinghouse Corp.*, 1963, 375 U.S. 261, 264 n.4. Indeed, in the present circumstances a section 10(k) proceeding would be a pointless formality. For having agreed to the settlement of jurisdictional disputes by the Joint Board and having experienced an adverse ruling in this case, Local 825 is in no position to challenge the merits of that ruling before another tribunal. *Cf. Electrical Workers Local 26 (McCloskey & Co.)*, 1964, 147 N.L.R.B. 1498.[2]

Accordingly, we conclude that a violation of section 8(b)(4)(D) has been properly established.

Different issues arise under the charge of secondary boycott in violation of section 8(b)(4)(B). This charge involves contractors additional to White. Burns & Roe, Inc., was the general contractor for the entire nuclear

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[2] In an effort to avoid this conclusion the respondent has cited cases in which a section 10(k) hearing has been required after some third party has decided that one union rather than the other should be assigned the disputed work. *E.g., International Union of Operating Engineers, Local 520 (Biebel Bros.)*, 1968, 170 N.L.R.B. No. 38; *Plasterers Local Union 79*, 1967, 167 N.L.R.B. No. 23; *Albany Printing Pressmen*, 1967, 166 N.L.R.B. No. 71; *United Industrial Workers, Seafarers (Albin Stevedore Co.)*, 1967, 162 N.L.R.B. No. 96. But in none of these cases was the decision of the third parties one by which the parties were bound, whether by contractual agreement or otherwise.

power plant project. It subcontracted all of the construction work and thus had no construction employees. Chicago Bridge & Iron Co. and Poirier & McLane Corp., as well as White, were subcontractors working at the project site. The Board's conclusion that section 8(b)(4)(B) had been violated was based on findings that the respondent had coerced Burns and its subcontractors other than White in an effort to force Burns to "cease doing business" with White.

The record amply justifies the conclusion that these contractors were subjected to coercion in the form of threats or walkouts, or both. The debatable issue is whether the object of this coercion was to force Burns to "cease doing business" with White within the meaning of section 8(b)(4)(B).

It was not the Board's theory, nor does it seem seriously to be contended that the respondent sought to compel Burns to stop using the services of White or to terminate its contract with White. Indeed, such action would not have been advantageous to the respondent. Rather, it is said that the respondent undertook to "disrupt the business relation" between Burns and White so that the contractor would try to induce the subcontractor to comply with the respondent's demands. The question is whether conduct so intended seeks to compel the one contractor to "cease doing business" with the other within the meaning of section 8(b)(4)(B).

We considered a similar situation in *N.L.R.B.* v. *Local 825, International Union of Operating Engineers*, 3d Cir. 1964, 326 F.2d 218, and concluded that the finding of a "cease doing business" objective was not warranted. It is now urged that this case is distinguishable from that one because in the earlier case the work stoppages, though to the neutral employer's detriment, were not attended by any communication of the union with that employer. However, the disruption of the neutral employer's business activity in connection with the primary employer and the objective of exerting pressure upon the primary employer through the neutral one was essentially the same there as here. Indeed, we quoted but did not approve the Board's finding:

> "'. . . Even, assuming, *arguendo*, that Respondent merely intended by its strike to force Selby and Elmhurst to require Nichols to change its method of operation, this in itself would have disrupted or seriously curtailed the existing business relationship between Nichols and these two other contractors, which would have been tantamount to causing the latter employers to cease doing business with Nichols."' 326 F.2d at 220.

Moreover, in neither case did the union admit a "cease doing business" objective was, but rather in both cases the circumstances compelled the inference that the union wanted the contractor to use its influence with the subcontractor to change the subcontractor's conduct, not to terminate their relationship.

Accordingly, following our earlier decision, we hold that proof of coercive activity amounting to "disruption of a business relationship" and aimed at causing a neutral employer to put pressure on the primary employer is insufficient, without more, to establish an effort to compel the one employer to "cease doing business" with the other. The language of section 8(b)(4)(B) is apt to prohibit the classical secondary boycott where the attempt is made to coerce the primary employer by compelling others to stop trading or otherwise dealing with him. But we think the "cease doing business" language is not apt to cover the objective proved here, however objectionable or deserving of condemnation it may be. *But cf. N.L.R.B.* v. *Carpenters District Council of New Orleans and Vicinity, AFL-CIO*, 5th Cir., No. 25408, decided February 19, 1969. We think it is for Congress to broaden the language of section 8(b)(4)(B) if it desires to cover such situations as this.

Finally, we consider objections of the respondent to the breadth of the Board's cease and desist order.

Paragraph 1(a) of the order restrains violations of section 8(b)(4)(B). That subparagraph will not be enforced because no violation of section 8(b)(4)(B) has been established.

An understanding of the controversy concerning the reach of paragraph 1(b) of the order requires quotation

of that subparagraph in full. It prohibits the respondent from

> "(b) Engaging in, or inducing or encouraging any individual employed by White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any services; or threatening, coercing, or restraining White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, Burns & Roe, Inc., or any other person, where, in either case, an object thereof is to force or require White Construction Company, or any other person engaged on the Oyster Creek, New Jersey, project, to assign any work to employees who are represented by the Respondent, rather than to employees who are represented by another labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act."

We read this language as covering any jurisdictional dispute which may arise in connection with the performance of any contract or subcontract on the present nuclear power plant project, so long as the Board has not determined that members of a particular union craft are entitled to the work in question. To enforce this order would mean that, in any such case, the respondent would be guilty of contempt if by any coercive means it should seek a resolution of a jurisdictional dispute in its favor. The vice of this, the respondent argues, is that the union is forced to accept whatever work assignment the employer may make. For, under the scheme of the Act, the Board will not entertain a section 10(k) proceeding to resolve a jurisdictional dispute unless it has reason to believe that a union is engaging in the very kind of activity which under the Board's order would be contempt of court. See *Local 478, International Union of Operating Engineers*, 1968, 172 N.L.R.B. No. 221.

We think the union's argument, whatever validity it might have in some cases, overlooks an important cir-

cumstance in this case. The contractors and the labor organizations in the building trades involved in this project have voluntarily agreed to the adjustment and resolution of jurisdictional disputes through resort to and decision by the Joint Board. Just as a contractor took the present dispute to the Joint Board, the respondent is free to take any similar future dispute concerning the assignment of work on the project to the Joint Board. The proposed decree would not in any way interfere with the utilization of that agreed method of settling jurisdictional disputes. Only if any employer should refuse to comply with a Joint Board award might the proposed order's prohibition of coercive action unfairly restrain the respondent. Accordingly, we think appropriate language should be added at the end of the order to except from its prohibition coercive action aimed at enforcement of a Joint Board decision. *Cf. Local 26, International Fur Workers, (Winslow Bro. & Smith Co.)*, 1950, 90 N.L.R.B. 1379. But, with that minor modification, we conclude that paragraph 1(b) of the Board's order does not overstep that broad administrative discretion in fashioning appropriate remedies which we have repeatedly recognized. *E.g. N.L.R.B.* v. *Local 542, International Union of Operating Engineers*, 3d Cir. 1964, 329 F.2d 512; *N.L.R.B.* v. *Highway Truck Drivers and Helpers, Local No. 107*, 3d Cir. 1962, 300 F.2d 317. In reaching this conclusion we have considered the respondent's persistent disposition to violate the provisions of section 8(b)(4) as demonstrated by the numerous cases in which this court has found it necessary to enforce Board orders against it and at least two cases in which we have found it necessary to invoke our contempt power to obtain the respondent's compliance with our orders.[3]

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[3] *E.g., N.L.R.B.* v. *Weber*, 3d Cir. 1967, 382 F.2d 387; *N.L.R.B.* v. *Local 825, I.U.O.E.*, 3d Cir. 1964, 326 F.2d 213; *N.L.R.B.* v. *Local 825, I.U.O.E.*, 3d Cir. 1963, 322 F.2d 478; *N.L.R.B.* v. *Local 825, I.U.O.E.*, 3d Cir. 1963, 315 F.2d 695.

In addition, this court has found it necessary in one case to adjudge Local 825 in contempt for refusal to comply with our decree enforcing a Board order. *N.L.R.B.* v. *Local 825*, No. 14,331 Order of June 18, 1964. A second such proceeding is pending at Nos. 17,091 and 17,092.

The order of the Board, modified and restricted in accordance with this opinion, will be affirmed.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 17180

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, RESPONDENT,

BURNS AND ROE, INC., and
WHITE CONSTRUCTION COMPANY, INTERVENORS

JUDGMENT

Before: Hastie, Chief Judge and Kalodner, Circuit Judge.

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board to enforce its order dated February 13, 1967, against the above-named Respondent, its officers, agents, and representatives. The Court heard argument of respective counsel on December 5, 1968, and has considered the briefs and transcript of record filed in this case. On April 25, 1969, the Court, being fully advised in the premises, handed down its opinion granting enforcement of the Board's order as modified. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Local No. 825, International Union of Operating Engineers, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Engaging in, or inducing or encouraging any individual employed by White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any services; or threatening, coercing, or restraining White Construction Company, Chicago Bridge & Iron Co., Poi-

rier & McLane Corporation, Burns & Roe, Inc., or any other person, where, in either case, an object thereof is to force or require White Construction Company, or any other person engaged on the Oyster Creek, New Jersey, project, to assign any work to employees who are represented by the Respondent, rather than to employees who are represented by another labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act, and except insofar as such action is aimed at enforcement of a decision of the National Joint Board for Settlement of Jurisdictional Disputes.

2. Take the following affirmative action which the Board has found will effectuate the policies of the Act:

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix". Copies of said notice, to be furnished by the Regional Director for Region 4, (Philadelphia, Pennsylvania), shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail copies of said notice to the Regional Director for posting by White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, and Burns & Roe, Inc., these companies willing, at all locations where notices to their respective employees are customarily posted.

(c) Notify the said Regional Director, in writing, within 10 days from the date of this Judgment, what steps the Respondent has taken to comply herewith.

BY THE COURT

WILLIAM H. HASTIE
Circuit Judge

DATED: May 29, 1969

APPENDIX

NOTICE TO ALL MEMBERS

PURSUANT TO

A Judgment of the United States Court of Appeals enforcing as modified an order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT induce or encourage any individual employed by WHITE CONSTRUCTION COMPANY, CHICAGO BRIDGE & IRON CO., POIRIER & McLANE CORPORATION, or any other employer, to engage in a strike or a refusal in the course of his employment to perform any services; or threaten, coerce, or restrain the above-named companies, and BURNS & ROE, I&C., or any other employer, where an object in either case is to force or require WHITE CONSTRUCTION COMPANY, or any other employer engaged on the Oyster Creek, New Jersey, project, to assign any work to employees represented by LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, rather than to employees represented by another labor organization, except insofar as any such action is lawful under Section 8(b)(4)(D) of the Act, and except insofar as such action is aimed at enforcement of decision of the National Joint Board for settlement of Jurisdictional Disputes.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the day of posting, and must not be altered, defaced, or covered by any other material.

If members have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1700 Bankers Securities Building, Walnut & Juniper Streets, Philadelphia, Pennsylvania, 19107 (Tel. No. 597-7601).

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17,180

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, RESPONDENT,

BURNS AND ROE, INC., and
WHITE CONSTRUCTION COMPANY, INTERVENORS

SUR PETITION FOR REHEARING

Present: HASTIE, Chief Judge, and KALODNER, FREEDMAN, SEITZ, ALDISERT and STAHL, Circuit Judges

The petition for rehearing filed by National Labor Relations Board, Petitioner in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

BY THE COURT,

(Sgd.) WILLIAM H. HASTIE
Chief Judge

Dated: June 12, 1969

SUPREME COURT OF THE UNITED STATES

No. 557, October Term, 1969

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

ORDER ALLOWING CERTIORARI—Filed February 24, 1970

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is consolidated with No. 570 and a total of one and one half hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES

No. 570, October Term, 1969

BURNS & ROE, INC., ET AL., PETITIONERS

v.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

ORDER ALLOWING CERTIORARI—Filed February 24, 1970

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted. The case is consolidated with No. 557 and a total of one and one half hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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In the Supreme Court of the United States

OCTOBER TERM, 1969

No.

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case insofar as it denies enforcement of the Section 8(b)(4)(B) portion of the Board's order.

OPINIONS BELOW

The opinion of the court of appeals (Appendix A, *infra*, pp. 13-23) is reported at 410 F. 2d 5. The findings, conclusions, and order of the National Labor Relations Board (Appendix C, *infra*, pp. 31-75) are reported at 162 NLRB 1617.

JURISDICTION

The judgment of the court of appeals was entered on May 29, 1969, and the Board's timely petition for rehearing and suggestion for rehearing en banc was denied on June 12, 1969 (Appendix B, *infra*, pp. 27, 30). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a union violates Section 8(b)(4)(B) of the National Labor Relations Act by exerting coercive pressure upon a neutral employer that compels such employer either (1) to induce the primary employer to change his method of doing business or (2) to cease doing business entirely with the primary employer.

STATUTES INVOLVED

The relevant statutory provisions are set forth in Appendix D, *infra*, pp. 77-78.

STATEMENT

A. The Board's Findings of Fact

In September 1964, Burns and Roe, Inc. (Burns) began building a nuclear power generator plant at Oyster Creek, New Jersey, for the Jersey Central Power and Light Company. Burns subcontracted all the construction work to three companies—White Construction Company (White), Chicago Bridge and Iron Company (Chicago Bridge), and Poirier and

McClane Corporation (Poirier) (App. C, pp. 33, 48; J.A. 20-21, 37.)[1] All three subcontractors employed operating engineers who were members of respondent Local 825, International Union of Operating Engineers, AFL-CIO, which had collective bargaining contracts with Chicago Bridge and Poirier, but not with Burns or White (App. C, pp. 33, 48; J.A. 23, 39, 59, 66, 68, 73).

White's obligation under the subcontract was to construct the reactor building for the nuclear power plant. When White came on the job in the beginning of September 1965,[2] it assigned the work of starting and stopping an electric welding machine to employees who were members of the Ironworkers Union (App. C, pp. 34, 49; J.A. 39, 42, 78, 390). When the welding machine was installed at the end of the month, representatives of Local 825 demanded that a member of that union be given the job of pushing the buttons which started and stopped the machine, and requested White to sign an agreement giving Local 825 jurisdiction over all power equipment, including electric welding machines (App. C, pp. 34, 49-50; J.A. 39, 41, 95, 149). About the same time, Local 825 requested Burns to sign a similar contract (App. C, pp. 35, 51; J.A. 22, 227-228). When both White and Burns refused to accede to these demands, the operating engineers employed by White, Chicago Bridge, and Poirier walked off the job (App. C, pp. 34, 35, 51; J.A. 24-25, 43-44, 68-69).

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[1] "J.A." references are to the joint appendix filed in the court below, a copy of which has been filed with the Clerk.

[2] All dates hereafter are in 1965.

On October 6, Burns formally submitted the work assignment dispute to the National Joint Board for the Settlement of Jurisdictional Disputes (App. C, p. 53; J.A. 28). The same day, Local 825 threatened the employers with another work stoppage unless the contracts were signed and the disputed work transferred to that union (App. C, pp. 37, n. 8; 53; J.A. 26, 70, 73-74). The employers again refused and another strike involving all of the operating engineers on the project ensued; it lasted from October 7 to 11 (App. C, pp. 37, n. 8; 53-54; J.A. 26-27, 44-45, 49, 74, 237-238).

On October 20, the Joint Board notified the parties that there was no reason to disturb the assignment of the disputed work to members of the Ironworkers Union (App. C, p. 55; J.A. 31-32). However, representatives of Local 825 made it clear to all of the employers that it did not accept the decision of the Joint Board and would cause further trouble if the work assignment were not altered (App. C, pp. 55-56; J.A. 78-81). On November 4, when the electric welding machine was started by an ironworker, White's engineers walked off their jobs, physically surrounded the machine, and prevented it from being operated (App. C, p. 56; J.A. 45-46, 55-56, 448). The next day, the same procedure was followed (App. C, p. 56; J.A. 46, 56-57). On November 8, the Board obtained an injunction in the United States District Court under Section 10(*l*) of the Act, restraining Local 825 from using coercive means to force a cessation of business among the employers at the jobsite or to compel White to assign the disputed

work to operating engineers (App. C, pp. 56-57; J.A. 46-47).

On November 17, White's engineers again walked off the job, this time ostensibly because of a dispute concerning the number of employees necessary to operate a recently installed electric pump (App. C, p. 57; J.A. 50-52, 179-180, 199). However, in a discussion between representatives of Local 825 and White before the strike, the former admitted that this walkout "was more or less because of the electric welding machine being in operation" (App. C, p. 58; J.A. 53). The strike lasted until December 21 or 22 (App. C, p. 59; J.A. 52-53).

B. The Board's Conclusions and Order

In the unfair labor practice proceeding against Local 825 which ensued, the Board found that that union had violated Section 8(b)(4)(D) of the Act by inducing and encouraging individuals employed by White, Chicago Bridge, and Poirier to strike, and by coercing these employers and Burns, for the purpose of forcing White to assign work on its electrical welding machine to engineers represented by Local 825 rather than to members of the Ironworkers Union (App. C, p. 36). The Board further found that by applying such economic pressure on the neutral employers—Burns, Chicago Bridge, and Poirier—Local 825 also violated Section 8(b)(4)(B) of the Act, since an additional object of such pressure was to cause "a disruption of the business relationship among the various employers at the jobsite" (App. C, p. 38). The Board, following its earlier decision in

Local 3, International Brotherhood of Electrical Workers, 140 NLRB 729 (discussed *infra*, p. 11), held that "an object such as [Local 825's] herein, although something less than a total cancellation of a business relationship, constitutes a 'cease doing business' object within the meaning of this section of the Act" (App. C, p. 38).[3] The Board ordered Local 825 to cease and desist from the unfair labor practices found and to post an appropriate notice (App. C, pp. 40-44).

C. The Decision of the Court of Appeals

On the Board's petition for enforcement of its cease and desist order, the court of appeals sustained the Board's finding that Local 825 had violated Section 8(b)(4)(D), but set aside its finding of a Section 8(b)(4)(B) violation (App. A, pp. 13-23). The court agreed that the record "amply justifies the conclusion that [neutral employers] were subjected to coercion in the form of threats or walkouts, or both" (App. A, p. 19). However, the court stated that Local 825 did not seek to compel a total cessation of business between the neutrals and White, but only to " 'disrupt the business relation[ship]' between Burns and White so that the [former] would try to induce [White] to comply with [the Union's] demands"

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[3] Member Fanning dissented from the Board's Section 8(b)(4)(B) finding on the ground that the finding that a jurisdictional dispute exists, within the meaning of Section 8(b)(4)(D), renders Section 8(b)(4)(B) inoperative (App. C, pp. 36-37, n. 7). But see *Local 5, United Ass'n of Journeymen* v. *National Labor Relations Board*, 321 F. 2d 366, 371 (C.A. D.C.), certiorari denied, 375 U.S. 921.

(App. A, p. 19). Following its earlier decision in *National Labor Relations Board* v. *Local 825, International Union of Operating Engineers*, 326 F. 2d 218, which involved a similar situation, the court held that (App. A, p. 20):

> * * * [P]roof of coercive activity amounting to "disruption of a business relationship" and aimed at causing a neutral employer to put pressure on the primary is insufficient, without more, to establish an effort to compel the one employer to "cease doing business" with the other. The language of section 8(b)(4)(B) is apt to prohibit the classical secondary boycott where the attempt is made to coerce the primary employer by compelling others to stop trading or dealing with him. But we think the "cease doing business" language is not apt to cover the objective proved here, however objectionable or deserving of condemnation it may be * * *. We think it is for Congress to broaden the language of section 8(b)(4)(B) if it desires to cover such situations as this.

REASONS FOR GRANTING THE WRIT

1. The holding of the court of appeals that the "cease doing business" language of Section 8(b)(4)(B) of the Act[4] covers only coercive pressure that

[4] Section 8(b)(4)(B) makes it an unfair labor practice for a union to exert strike pressure on a neutral or secondary employer with an object of forcing or requiring him "to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or *to cease doing business with any other person*" (emphasis added).

a union exerts in order to achieve an immediate, total cessation of the business relationship between the neutral and primary employers is in direct conflict with the recent decision of the Fifth Circuit in *National Labor Relations Board* v. *Carpenters District Council of New Orleans and Vicinity, AFL-CIO*, 407 F. 2d 804. In *Carpenters District Council*, the union had exerted coercive pressure upon the general contractor (a neutral employer) in furtherance of its effort to force the subcontractor (the primary employer) to rehire six of its members who had been replaced by members of another union. The union defended on the ground that, since it "never suggested to [the neutral] that it should cease doing business with [the primary] and had no desire for this to happen," Section 8(b)(4)(B) did not apply (407 F. 2d at 806). The Fifth Circuit rejected this contention, stating that, "[w]hile the statute [8(b)(4)(B)] by its literal terms does require that an object of illegal secondary pressure be to force a neutral to cease doing business with a primary employer, the Board has said, and we agree, that the objective of causing a serious disruption of an existing business relationship, even though something less than a total cancellation of the business connection, is within the intendment of the statute" (*ibid.*). The court below expressly noted this conflict of decisions (see App. A, p. 20).

Other courts of appeals likewise have paralleled the Fifth Circuit in interpreting Section 8(b)(4)(B) broadly. See *National Labor Relations Board* v. *Local 3, International Brotherhood of Electrical Workers,*

325 F. 2d 561 (C.A. 2), enforcing 140 NLRB 729; *National Labor Relations Board* v. *Milk Wagon Drivers' Union, Local 753*, 335 F. 2d 326, 328-329 (C.A. 7); *New York Mailers' Union No. 6* v. *National Labor Relations Board*, 316 F. 2d 371 (C.A. D.C.), enforcing 136 NLRB 196, 197-198. See also *Alpert* v. *Local 1066, International Longshoremen's Ass'n*, 166 F. Supp. 22, 25 (D. Mass.); but cf. *Retail Clerks Union Local 770* v. *National Labor Relations Board*, 296 F. 2d 368 (C.A. D.C.). This conflict among circuits should be resolved by this Court so as to achieve that national uniformity in labor policy which Congress sought to foster in enacting the Act. This is particularly so where, as here, the question is an important and recurring one in the administration of the Act.

2. As this Court has recognized, Congress's objective in enacting Section 8(b)(4)(B) was to narrow the area of industrial conflict by shielding "unoffending employers and others from pressures in controversies not their own." *National Labor Relations Board* v. *Denver Bldg. Trades Council*, 341 U.S. 675, 692; see also *National Woodwork Mfrs. Ass'n* v. *National Labor Relations Board*, 386 U.S. 612, 623-626, 632. This purpose is substantially impaired by interpreting the "cease doing business" language, which defines the object proscribed by that section (see note 4, *supra*), as being limited to "the classical secondary boycott" entailing an effort to force the neutral immediately to stop all "trading or otherwise dealing with" the primary employer (App. A, p. 20). This is so because, in many situations where the union ex-

erts pressure on a neutral employer, its major aim is not to force a total cessation of business relations between the neutral and the primary employer, but to force the neutral to induce the primary employer to change its operations as the union wishes. If the neutral employer cannot induce the primary employer to make the change demanded by the union, however, then he may have no choice but to cease doing business.

Thus, where, as in *Denver Bldg. Trades Council, supra*, the union brings pressure on the general contractor because it has engaged a non-union subcontractor, the union would ordinarily be satisfied if the general contractor succeeded in getting the subcontractor to sign a contract with the union; only if the general contractor were unable to achieve this result would the union require that the subcontractor actually be removed from the job. By confining Section 8(b)(4)(B) to situations where the union's immediate objective is a total cancellation of the business relationship between the neutral and the primary employer, the Third Circuit has immunized a large area of secondary coercion from the reach of Section 8(b)(4)(B). Moreover, it has provided an easy means of evading the sanctions of that provision, for, in most cases, a union could readily couch its demands in "partial", rather than "total", terms.[5]

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[5] It would appear that the Third Circuit's decision also will have an impact on Section 8(e) of the Act (App. D, p. 78). This Court, in *National Woodwork Mfrs. Ass'n* v. *National Labor Relations Board, supra*, recognized that Section 8(e), which bars "hot cargo" agreements, was intended to comple-

Section 8(b)(4)(B) can reasonably be interpreted to avoid these anomalies. As the Board explained in *Local 3, International Brotherhood of Electrical Workers, supra,* 140 NLRB at 730, which involved a situation analogous to that here:

> While it does not appear that Respondent [union] explicitly demanded that the Company cancel the Delee contract if Delee refused to use its members, this was the only alternative the Company had if Delee continued to refuse replacement of its employees by members of Respondent * * *. [Moreover,] [e]ven assuming, *arguendo*, that Respondent did not consciously contemplate imposition of this sanction, it is nonetheless clear that Respondent sought by its threat to require that the Company superimpose upon its existing agreement with Delee an added condition of performance, that the work had to be done by Respondent's members. Acceptance of this condiiton by Delee would require the Company to cease doing business with Delee on the basis of their original arrangement. * * *

3. The problem is a recurring one in the administration of the Act.[6] The Third Circuit, by reaffirm-

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ment and be read together with Section 8(b)(4)(B). Section 8(e) contains the same "cease doing business" language as is involved here.

[6] In addition to the cases cited *supra*, pp. 8-9, see, *e.g., Local 294, International Brotherhood of Teamsters (Great A & P)*, 173 NLRB No. 234, p. 6; *Associated Musicians of Greater New York, Local 802 (Random Travel, Inc.)*, 171 NLRB No. 149, p. 10; *Bricklayers and Masons Local No. 2 (Weidman Metal)*, 166 NLRB No. 26, p. 5, n. 10; *Plasterers' Protective and Benevolent Society*, 158 NLRB 1608, 1618; *Local 2346,*

ing its earlier decision in *National Labor Relations Board* v. *Local 825, International Union of Operating Engineers*, 326 F. 2d 218, has made it plain that its view on this question is a fixed one. Review of this issue at the present time is thus appropriate.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Respectfully submitted.

ERWIN N. GRISWOLD,
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SEPTEMBER 1969.

United Brotherhood of Carpenters, 156 NLRB 1105, 1111; *Local 38, International Brotherhood of Electrical Workers*, 155 NLRB 1147, 1151.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17180

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, RESPONDENT

BURNS AND ROE, INC., and WHITE CONSTRUCTION COMPANY, INTERVENORS

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Argued December 5, 1968

Before: HASTIE, *Chief Judge* and KALODNER, *Circuit Judge*

OPINION OF THE COURT

(Filed April 25, 1969)

By HASTIE, *Chief Judge.*

This case is before us on a petition of the National Labor Relations Board for enforcement of a cease and desist order based upon the Board's finding that the respondent, Local 825, International Union of Operating Engineers, violated section 158(b)(4)(D) of the National Labor Relations Act, 29 U.S.C. § 158

(b)(4)(D), by coercing White Construction Co., an employer, with the object of compelling White to assign the starting and stopping of an electric welding machine to operating engineers represented by Local 825 rather than to the ironworkers who used the machine and were represented by Ironworkers Local 350. The Board also found that in connection with the same controversy Local 825 had violated section 8(b)(4)(B) of the Act by conduct in the nature of a secondary boycott against other employers in an effort to compel them to cease doing business with White. This conduct also was interdicted by the cease and desist order.

The Board's factual findings relevant to the alleged section 8(b)(4)(D) violation are adequately supported by the record. It appears that White undertook as a subcontractor to construct the reactor building for a projected nuclear power plant. In the course of the job White assigned to its ironworker employees the work of starting and stopping an electric welding machine that they used in welding structural steel. At that time White had no contract with Local 825 though White's work force included two members of that union, an engineer and an oiler who operated a crane.

At this juncture a representative of Local 825 demanded that White employ a member of that Union to push the buttons that started and stopped the welding machine. When White failed to comply and to sign an agreement giving Local 825 jurisdiction that would include electric welding machines, the crane engineer and oiler stopped work for one day. More prolonged work stoppages by the engineers occurred during the ensuing weeks. The Board found the union responsible for these work stoppages and the record fully supports that conclusion.

Both Local 825 and the Ironworkers' Union were obligated by contract with the Building Trades Employers' Association to recognize the jurisdiction of the National Joint Board for the Settlement of Jurisdictional Disputes and "to be bound by all decisions and awards" made by that body in exercise of its agreed jurisdiction. Accordingly, the matter of the work claimed by Local 825 in connection with the use of electric welding equipment was referred to the Joint Board. That Board issued an award confirming White's assignment of the work in question to the ironworkers.

Although in its answer to the complaint in this case Local 825 admitted that it was bound, as its contract with the Employers' Association provided, by the award of the Joint Board, it refused to respect the award when it was made. Rather, it persisted in its demand that the disputed work be assigned to operating engineers and in its coercive tactics to enforce that demand. This unfair labor practice proceeding followed.

The union asserts two principal defenses; first, that there was no such claim by the ironworkers to the work in question as would create a jurisdictional dispute; and second, that the present unfair labor practice decision is invalid because it was not preceded by and grounded upon a Board award of the claimed work to a particular craft in a section 10(k) proceeding, 29 U.S.C. § 160(k).

The contention that there were no conflicting claims creating a jurisdictional dispute is without merit. The employer's original assignment of ironworkers to start and stop the electric welding machines they were to use may well have been made routinely without any demand by those employees or their union. However, they did accept this work as an incident of

their job. This entire dispute grows out of that work assignment and its acceptance.

More important, the Ironworkers Union and the Union of Operating Engineers were opposing parties in the ensuing proceeding before the Joint Board to determine which craft should perform the work in question. The Ironworkers prevailed, thereby establishing their right to the work under the procedure agreed to by all of the parties. Thereafter, ironworkers performed the work as a matter of established right. And they have not disclaimed that right. In these circumstances, it is specious to argue that the persisting demand of the operating engineers that the work be assigned to them does not create a jurisdictional dispute. *Cf. N.L.R.B.* v. *Local 1291 International Longshoremen's Ass'n* 3d Cir. 1966, 368 F.2d 107; *N.L.R.B.* v. *Local 25, International Brotherhood of Electrical Workers*, 2d Cir. 1967, 383 F.2d 449. "The fact that one union has the jobs and holds on to them in a polite, non-belligerant manner while the other union uses the forbidden tactics in an effort to get them, or some of them, does not mean that what Congress regarded as the evils of a jurisdictional dispute are not present." *International Brotherhood of Carpenters* v. *C. J. Montag & Sons, Inc.*, 9th Cir. 1964, 335 F.2d 216, 221.

The respondent's second contention is that this unfair labor practice proceeding is premature because the Board did not first utilize a proceeding under section 10(k) of the Act to make a decisive award of the work to one craft or the other.[1]

In most cases a Board award under section 10(k) and a refusal to abide by that award must precede

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[1] Whether this contention should fail here because it was not advanced before the Board, we do not decide.

an unfair labor practice proceeding based on a jurisdictional dispute. *N.L.R.B.* v. *Radio and Television Broadcast Engineers, Local 1212 (C.B.S.)*, 1961, 364 U.S. 573; *N.L.R.B.* v. *United Ass'n of Journeymen*, 3d Cir. 1957, 242 F.2d 722. However, we agree with the Board that in the circumstances of this case a section 10(k) proceeding was not necessary. That section reads as follows:

> "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of Section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

It will be observed that the statutue expressly provides for the discontinuance of a section 10(k) proceeding where the parties show that they have "agreed upon methods for the voluntary adjustment of the dispute". The present parties had agreed in advance upon a method of voluntary adjustment and did in fact utilize that method in this case. We cannot believe that Congress intended to require a section 10(k) proceeding after a binding voluntary settlement of a dispute when the legislative scheme provides for the discontinuance of a section 10(k) proceeding if such an adjustment shall occur during its pendency. *Wood, Wire and Metal Lathers Union (Acoustical*

Contractors), 1958, 119 N.L.R.B. 1345, cited with approval, *Carey* v. *Westinghouse Corp.*, 1963, 375 U.S. 261, 264 n.4. Indeed, in the present circumstances a section 10(k) proceeding would be a pointless formality. For having agreed to the settlement of jurisdictional disputes by the Joint Board and having experienced an adverse ruling in this case, Local 825 is in no position to challenge the merits of that ruling before another tribunal. *Cf. Electrical Workers Local 26 (McCloskey & Co.)*, 1964, 147 N.L.R.B. 1498.[2]

Accordingly, we conclude that a violation of section 8(b)(4)(D) has been properly established.

Different issues arise under the charge of secondary boycott in violation of section 8(b)(4)(B). This charge involves contractors additional to White. Burns & Roe, Inc., was the general contractor for the entire nuclear power plant project. It subcontracted all of the construction work and thus had no construction employees. Chicago Bridge & Iron Co. and Poirier & McLane Corp., as well as White, were subcontractors working at the project site. The Board's conclusion that section 8(b)(4)(B) had been violated was based on findings that the respondent had coerced Burns and its subcontractors other than

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[2] In an effort to avoid this conclusion the respondent has cited cases in which a section 10(k) hearing has been required after some third party has decided that one union rather than the other should be assigned the disputed work. *E.g., International Union of Operating Engineers, Local 520 (Biebel Bros.)*, 1968, 170 N.L.R.B. No. 38; *Plasterers Local Union 79*, 1967, 167 N.L.R.B. No. 23; *Albany Printing Pressmen*, 1967, 166 N.L.R.B. No. 71; *United Industrial Workers, Seafarers (Albin Stevedore Co.)*, 1967, 162 N.L.R.B. No. 96. But in none of these cases was the decision of the third parties one by which the parties were bound, whether by contractual agreement or otherwise.

White in an effort to force Burns to "cease doing business" with White.

The record amply justifies the conclusion that these contractors were subjected to coercion in the form of threats or walkouts, or both. The debatable issue is whether the object of this coercion was to force Burns to "cease doing business" with White within the meaning of section 8(b)(4)(B).

It was not the Board's theory, nor does it seem seriously to be contended that the respondent sought to compel Burns to stop using the services of White or to terminate its contract with White. Indeed, such action would not have been advantageous to the respondent. Rather, it is said that the respondent undertook to "disrupt the business relation" between Burns and White so that the contractor would try to induce the subcontractor to comply with the respondent's demands. The question is whether conduct so intended seeks to compel the one contractor to "cease doing business" with the other within the meaning of section 8(b)(4)(B).

We considered a similar situation in *N.L.R.B.* v. *Local 825, International Union of Operating Engineers*, 3d Cir. 1964, 326 F.2d 218, and concluded that the finding of a "cease doing business" objective was not warranted. It is now urged that this case is distinguishable from that one because in the earlier case the work stoppages, though to the neutral employer's detriment, were not attended by any communication of the union with that employer. However, the disruption of the neutral employer's business activity in connection with the primary employer and the objective of exerting pressure upon the primary employer through the neutral one was essentially the same there as here. Indeed, we quoted but did not approve the Board's finding:

> '". . . Even, assuming, *arguendo*, that Respondent merely intended by its strike to force Selby and Elmhurst to require Nichols to change its method of operation, this in itself would have disrupted or seriously curtailed the existing business relationship between Nichols and these two other contractors, which would have been tantamount to causing the latter employers to cease doing business with Nichols." ' 326 F.2d at 220.

Moreover, in neither case did the union admit a "cease doing business" objective was, but rather in both cases the circumstances compelled the inference that the union wanted the contractor to use its influence with the subcontractor to change the subcontractor's conduct, not to terminate their relationship.

Accordingly, following our earlier decision, we hold that proof of coercive activity amounting to "disruption of a business relationship" and aimed at causing a neutral employer to put pressure on the primary employer is insufficient, without more, to establish an effort to compel the one employer to "cease doing business" with the other. The language of section 8(b)(4)(B) is apt to prohibit the classical secondary boycott where the attempt is made to coerce the primary employer by compelling others to stop trading or otherwise dealing with him. But we think the "cease doing business" language is not apt to cover the objective proved here, however objectionable or deserving of condemnation it may be. *But cf. N.L.R.B.* v. *Carpenters District Council of New Orleans and Vicinity, AFL-CIO*, 5th Cir., No. 25408, decided February 19, 1969. We think it is for Congress to broaden the language of section 8(b)(4)(B) if it desires to cover such situations as this.

Finally, we consider objections of the respondent to the breadth of the Board's cease and desist order.

Paragraph 1(a) of the order restrains violations of section 8(b)(4)(B). That subparagraph will not be enforced because no violation of section 8(b)(4)(B) has been established.

An understanding of the controversy concerning the reach of paragraph 1(b) of the order requires quotation of that subparagraph in full. It prohibits the respondent from

> "(b) Engaging in, or inducing or encouraging any individual employed by White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any services; or threatening, coercing, or restraining White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, Burns & Roe, Inc., or any other person, where, in either case, an object thereof is to force or require White Construction Company, or any other person engaged on the Oyster Creek, New Jersey, project, to assign any work to employees who are represented by the Respondent, rather than to employees who are represented by another labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act."

We read this language as covering any jurisdictional dispute which may arise in connection with the performance of any contract or subcontract on the present nuclear power plant project, so long as the Board has not determined that members of a particular union craft are entitled to the work in question. To enforce this order would mean that, in any

such case, the respondent would be guilty of contempt if by any coercive means it should seek a resolution of a jurisdictional dispute in its favor. The vice of this, the respondent argues, is that the union is forced to accept whatever work assignment the employer may make. For, under the scheme of the Act, the Board will not entertain a section 10(k) proceeding to resolve a jurisdictional dispute unless it has reason to believe that a union is engaging in the very kind of activity which under the Board's order would be contempt of court. See *Local 478, International Union of Operating Engineers*, 1968, 172 N.L.R.B. No. 221.

We think the union's argument, whatever validity it might have in some cases, overlooks an important circumstance in this case. The contractors and the labor organizations in the building trades involved in this project have voluntarily agreed to the adjustment and resolution of jurisdictional disputes through resort to and decision by the Joint Board. Just as a contractor took the present dispute to the Joint Board, the respondent is free to take any similar future dispute concerning the assignment of work on the project to the Joint Board. The proposed decree would not in any way interfere with the utilization of that agreed method of settling jurisdictional disputes. Only if any employer should refuse to comply with a Joint Board award might the proposed order's prohibition of coercive action unfairly restrain the respondent. Accordingly, we think appropriate language should be added at the end of the order to except from its prohibition coercive action aimed at enforcement of a Joint Board decision. *Cf. Local 26, International Fur Workers, (Winslow Bro. & Smith Co.)*, 1950, 90 N.L.R.B. 1379. But, with that minor modification, we conclude that paragraph 1(b) of the

Board's order does not overstep that broad administrative discretion in fashioning appropriate remedies which we have repeatedly recognized. *E.g. N.L.R.B.* v. *Local 542, International Union of Operating Engineers*, 3d Cir. 1964, 329 F.2d 512; *N.L.R.B.* v. *Highway Truck Drivers and Helpers, Local No. 107*, 3d Cir. 1962, 300 F.2d 317. In reaching this conclusion we have considered the respondent's persistent disposition to violate the provisions of section 8(b)(4) as demonstrated by the numerous cases in which this court has found it necessary to enforce Board orders against it and at least two cases in which we have found it necessary to invoke our contempt power to obtain the respondent's compliance with our orders.[3]

The order of the Board, modified and restricted in accordance with this opinion, will be affirmed.

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[3] *E.g., N.L.R.B.* v. *Weber*, 3d Cir. 1967, 382 F.2d 387; *N.L.R.B.* v. *Local 825, I.U.O.E.*, 3d Cir. 1964, 326 F.2d 213; *N.L.R.B.* v. *Local 825, I.U.O.E.*, 3d Cir. 1963, 322 F.2d 478; *N.L.R.B.* v. *Local 825, I.U.O.E.*, 3d Cir. 1963, 315 F.2d 695.

In addition, this court has found it necessary in one case to adjudge Local 825 in contempt for refusal to comply with our decree enforcing a Board order. *N.L.R.B.* v. *Local 825*, No. 14,331 Order of June 18, 1964. A second such proceeding is pending at Nos. 17,091 and 17,092.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17180

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, RESPONDENT
BURNS AND ROE, INC., and WHITE CONSTRUCTION COMPANY, INTERVENORS

JUDGMENT

Before: Hastie, Chief Judge and Kalodner, Circuit Judge.

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board to enforce its order dated February 13, 1967, against the above-named Respondent, its officers, agents, and representatives. The Court heard argument of respective counsel on December 5, 1968, and has considered the briefs and transcript of record filed in this case. On April 25, 1969, the Court, being fully advised in the premises, handed down its opinion granting enforcement of the Board's order as modified. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Local No. 825, International Union of Operating Engineers, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Engaging in, or inducing or encouraging any individual employed by White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any services; or threatening, coercing, or restraining White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, Burns & Roe, Inc., or any other person, where, in either case, an object thereof is to force or require White Construction Company, or any other person engaged on the Oyster Creek, New Jersey, project, to assign any work to employees who are represented by the Respondent, rather than to employees who are represented by another labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act, and except insofar as such action is aimed at enforcement of a decision of the National Joint Board for Settlement of Jurisdictional Disputes.

2. Take the following affirmative action which the Board has found will effectuate the policies of the Act:

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix". Copies of said notice, to be furnished by the Regional Director for Region 4, (Philadelphia, Pennsylvania), shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken

by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail copies of said notice to the Regional Director for posting by White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, and Burns & Roe, Inc., these companies willing, at all locations where notices to their respective employees are customarily posted.

(c) Notify the said Regional Director, in writing, within 10 days from the date of this Judgment, what steps the Respondent has taken to comply herewith.

By the Court

/s/ William H. Hastie
Circuit Judge

Dated: May 29, 1969

APPENDIX

NOTICE TO ALL MEMBERS

PURSUANT TO

A Judgment of the United States Court of Appeals enforcing as modified an order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT induce or encourage any individual employed by WHITE CONSTRUCTION COMPANY, CHICAGO BRIDGE & IRON CO., POIRIER & MCLANE CORPORATION, or any other employer, to engage in a strike or a refusal in the course of his employment to perform any services; or threaten, coerce, or restrain the above-named companies, and BURNS & ROE, INC., or any other employer, where an object in either case is to force or require WHITE CONSTRUCTION COMPANY, or any other employer engaged on the Oyster Creek, New Jersey, project, to assign any work to employees represented by LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, rather than to employees represented by another labor organization, except insofar as any such action is lawful under Section 8(b)(4)(D) of the Act, and except insofar as such action is aimed at enforcement of decision of the National Joint Board for Settlement of Jurisdictional Disputes.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO
(Labor Organization)

Dated ---------- By ----------
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the day of posting, and must not be altered, defaced, or covered by any other material.

If members have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1700 Bankers Securities Building, Walnut & Juniper Streets, Philadelphia, Pennsylvania, 19107 (Tel. No. 597-7601).

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17,180

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, RESPONDENT

BURNS AND ROE, INC., and WHITE CONSTRUCTION COMPANY, INTERVENORS

SUR PETITION FOR REHEARING

Present: HASTIE, Chief Judge, and KALODNER, FREEDMAN, SEITZ, ALDISERT and STAHL, Circuit Judges

The petition for rehearing filed by National Labor Relations Board, Petitioner in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

/s/ William H. Hastie
Chief Judge

Dated: June 12, 1969

APPENDIX C

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 4-CC-359

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

and

BURNS & ROE, INC.

Case No. 4-CD-144

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

and

WHITE CONSTRUCTION COMPANY

DECISION AND ORDER

On September 28, 1966, Trial Examiner John F. Funke issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that those allegations be dismissed. Thereafter, the Respondent, the General Counsel, and

the Charging Parties filed exceptions to the Trial Examiner's Decision and supporting briefs. An answering brief was also filed by the Charging Parties.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision,[1] the exceptions, the briefs, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, insofar as they are consistent with this Decision and Order.

1. We agree with the Trial Examiner that the Respondent violated Section 8(b)(4)(i) and (ii)(D) of the Act, because it was responsible for three separate work stoppages,[2] with an object of forcing White Construction Company, herein called White,

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[1] We specifically disavow the gratuitous, injudicious, and wholly unwarranted remarks contained in footnotes 17 and 26 and on page 9 of the Trial Examiner's Decision.

The following inadvertences contained in the Trial Examiner's Decision are hereby corrected: The name "Norton" is changed to "Wharton" (p. 8, line 22); the correct spelling of one of the employers herein is Poirier; paragraph 7(a) of the complaint refers to the forcing of Chicago Bridge, Poirier, and White to cease doing business with Burns, and paragraph 7(b) refers to be forcing of Burns to cease doing business with White (p. 9, lines 8-10); the words "Board Order" are changed to "broad Order" (p. 13, line 46).

[2] These strikes, which lasted from a few days to several weeks, began on October 7, November 4, and November 16, 1965.

to assign work on its electric welding machine to engineers who are members of Respondent, rather than to ironworkers who are members of Local 350, International Association of Bridge, Structural & Ornamental Ironworkers, AFL-CIO, herein called the Ironworkers.[3] With regard to an earlier work stoppage which occurred on October 1, 1965, and had the same proscribed object, the Trial Examiner found that there was insufficient evidence to hold the Respondent responsible for the strike. We do not agree.

Burns & Roe, Inc., herein called Burns, is a general contractor for Jersey Central Power and Light Company, which is constructing a nuclear power generator plant at Oyster Creek, New Jersey. Certain construction work was subcontracted by Burns to White, Chicago Bridge & Iron Co. (herein called Chicago Bridge), and Poirier & McLane Corporation (herein called Poirier). These subcontractors employ operating engineers, ironworkers, carpenters, and laborers. Burns has no construction employees on the job. All the operating engineers on the project are members of the Respondent, which has bargaining contracts with Chicago Bridge and Poirier, but not with Burns and White. Prior to 1963, Burns and White, who are members of Building Contractors Association of New Jersey, were covered by a multi-

[3] On October 19, 1965, the National Joint Board for Settlement of Jurisdictional Disputes, Building and Construction Industry, herein called the Joint Board, after a proceeding in which all parties participated, issued an award confirming White's assignment of the disputed work to the ironworkers. The complaint herein was issued by the Regional Director for Region 4 in accordance with Section 102.93 of the Board's Rules and Regulations, Series 8, as amended, after the Respondent failed to comply with the aforesaid award. See *Electrical Workers Local 26 (McCloskey & Co.)*, 147 NLRB 1498, 1502-3.

employer bargaining contract with the Respondent. In January 1964, this Board found the Respondent in violation of Section 8(b)(1)(B) and (3) of the Act for attempting to bargain unilaterally with the individual members of the Association.[4]

As detailed in the Trial Examiner's Decision, during the days immediately preceding October 1, 1965, on which date all the operating engineers employed by White, Chicago Bridge, and Poirier engaged in a work stoppage, Bill Bonatz, Hank Behrend, and Bobbie Illario, agents of the Respondent, were involved in the conduct described below.

In the latter part of September, Chris Gunderson, White's construction superintendent, was approached by Bonatz and Behrend and told that an engineer would be required to push the buttons which operated an electric welding machine recently installed by White on the jobsite. After Gunderson checked with his office and was informed that this work had been assigned to White's ironworkers who were to perform the actual welding, he relayed this information to Bonatz and Behrend. On September 30, Bonatz and Behrend again approached and told Gunderson that they were going "to knock the engineers off the crane", and they gave Gunderson three copies of a proposed agreement for White to sign. On that date, the engineer and oiler on the crane stopped work at 10 a.m. and did not return to work until about 1 p.m. on October 1.

On September 29, 1965, Giles Willis, resident construction manager for Burns, was visited by Bonatz

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[4] *International Union of Operating Engineers, Local 825, et al. (Building Contractors Association of New Jersey)*, 145 NLRB 952, enfd. by consent decree entered by the U.S. Court of Appeals for the Third Circuit on August 5, 1966, in Case No. 22-CB-538 (1-2).

and Behrend and told that members of the Respondent employed by subcontractors on the job had taken a vote to cease work unless Burns signed a contract with Respondent. On the next day, Bonatz, Behrend, and Illario approached Willis, who was given copies of the above-mentioned proposed contract and told that, unless Burns signed the contract by the following morning, all the operating engineers would walk off the job. On October 1, at 8 a.m., the same three agents again met Willis and asked if Burns had signed the contract.[5] When Willis replied in the negative, they left his office and proceeded to the parking lot outside the gate and engaged in conversations with the engineers who had gathered there. The engineers, who were employees of White, Chicago Bridge, and Poirier, did not report for work until 1 p.m.

The Trial Examiner viewed the October 1 work stoppage as spontaneous conduct on the part of the engineers and found that the General Counsel did not sustain his burden of proof to show that the strike was authorized or directed by the Respondent. In our opinion, the preponderance of record evidence requires a finding that the Respondent induced and encouraged the engineers to engage in the strike. Thus, Behrend presided at a meeting of all engineers employed on the project which was held on the jobsite a few days prior to October 1. A unanimous vote was taken to strike because of White's refusal to assign the welding machine work to an engineer

[5] The contract sought from White and Burns provided for Respondent's members to perform the disputed work. The contract also provides that any employer who becomes a party thereto could not subcontract any work covered by the agreement unless the subcontractor agreed in writing to perform all work subject to the terms and conditions of the agreement.

and because neither White nor Burns had contracts with the Respondent. Bonatz and Illario were also present at this meeting. Thereafter, there were requests that the work be performed by Respondent's members and threats of work stoppage were made by Respondent's agents. Immediately before the stoppage of October 1, Bonatz, Behrend, and Illario talked to the engineers assembled at the parking lot.[6]

Upon the foregoing facts and the entire record, we find that a preponderance of evidence establishes that the Respondent, with an object to force or require White to assign the disputed work to engineers represented by the Respondent, induced or encouraged employees employed by White, Chicago Bridge, and Poirier to engage in a work stoppage on October 1, 1965, and threatened, restrained, or coerced Burns and these other employers, all in violation of Section 8(b)(4)(i) and (ii)(D) of the Act.

2. Contrary to the Trial Examiner, we find, that the Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act by its work stoppages of October 1 and 7, 1965, as alleged by the complaint in Case No. 4-CC-359.[7]

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[6] Behrend testified that, after the strike began, he reported it to the Respondent's office and that shortly thereafter he received a message from an unidentified individual at that office that "there was some kind of negotiations going on and to get the men back on the job right away". It also appears that the Joint Board was notified of the dispute by telegram immediately after the strike began and the Joint Board requested the general president of International Union of Operating Engineers to direct the Respondent local union to have the men return to work immediately, pending an adjustment of the dispute.

[7] Member Fanning dissents from this finding. His view, expressed in *Local 5, Plumbers Union (Arthur Venneri Com-*

We have found that the Respondent was responsible for the strike of October 1, and in agreement with the Trial Examiner, we have found the Respondent also responsible for the strike of October 7.[8] It is clear that Respondent's strike threats and strikes were in furtherance of the Respondent's primary dispute with White who refused to reassign the welding machine work to engineers represented by the Respondent.[9] It is equally clear that the Respondent

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pany), 137 NLRB 828, 834, and 145 NLRB 1580, 1601, and recently in *Millwrights Local Union 1102 (Dobson Heavy Haul, Inc.)*, 162 NLRB No. 6, is that the finding herein that a jurisdictional dispute exists in these consolidated cases precludes a finding that the Respondent's conduct for the purpose of resolving this dispute is also violative of Section 8(b)(4)(B). But see the contrary position taken by a majority of the Board in *Venneri* and *Dobson*, and the recent opinion in *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company)*, 162 NLRB No. 63, wherein the Board found violations of 8(b)(4)(B) and (D) in a consolidated proceeding.

[8] With regard to the strike which began on October 7, the evidence shows that on October 6, the Respondent threatened Willis and Telghman Suffrecal, representatives of Burns and Poirier, respectively, with a strike, and that Langlinais, project manager for Chicago Bridge, was told by the Respondent after the strike was under way that it resulted from the welding machine dispute. Employees of Poirier and Chicago Bridge, engaged in a work stoppage between October 7 and 11. These employees had also ceased work on October 1.

The work stoppages which began on November 4 and 16, 1965, were confined to employees of White, with whom the Respondent had a primary dispute, and are not alleged as violations of Section 8(b)(4)(B).

[9] The General Counsel has argued that the Respondent also had a primary dispute with Burns arising out of the latter's refusal to sign a contract with Respondent, and that White, Poirier, and Chicago Bridge were neutrals enmeshed in that dispute, but we perceive no useful purpose for deciding

sought to achieve the assignment of this disputed work by applying economic pressure on neutrals to the dispute—Burns, the general contractor, and subcontractors Chicago Bridge and Poirier—with an object of causing a disruption of the business relationship among the various employers at the jobsite.[10] Unlike the Trial Examiner, who found the object proscribed by Section 8(b)(4)(B) to be a literal cessation of business, the Board has held that an object such as the Respondent's herein, although something less than a total cancellation of a business relationship, constitutes a "cease doing business" object within the meaning of this section of the Act.[11] Here, therefore, within the meaning of the statute, an object of the Respondent was to force Burns to cease doing business with White, and to force Chicago Bridge and Poirier to cease doing business with Burns in order to compel Burns to cease doing business with White.

3. We agree with the Trial Examiner's recommendation that a broad cease and desist order is required to remedy the Respondent's unfair labor prac-

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whether a violation should be predicated upon that theory. We note, however, that the apparent purpose of Respondent's request for a contract from Burns was to obtain the disputed work from White.

[10] See *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company), supra; Millwrights Local Union 1102 (Dobson Heavy Haul, Inc.), supra; Local 1291, International Longshoremen's Association et al. (Pennsylvania Sugar),* 142 NLRB 257, 261, enfd. 332 F. 2d 559 (C.A. 3).

[11] *Local 3, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company),* 140 NLRB 729, 730; *Local 1291, International Longshoremen's Association et el. (Pennsylvania Sugar), supra.*

tices found violative of Section 8(b)(4)(D) of the Act. In addition to the work stoppages which stemmed from White's assignment of work, the Respondent has also been involved in jurisdictional disputes concerning the assignment of work by other employers on the Oyster Creek project and has been enjoined by the Court from engaging in other work stoppages on this project.[12] Therefore, until all building and construction work at the Oyster Creek project is completed, we shall order the Respondent to cease and desist from forcing or requiring White or any other employer engaged on the project to assign any work to employees represented by the Respondent rather than to employees represented by another labor organization, except insofar as permitted by Section 8(b)(4)(D) of the Act.

Having found that the Respondent has also engaged in violations of Section 8(b)(4)(B) and because of the Respondent's demonstrated proclivity to engage in unlawful secondary activities, as noted in the Trial Examiner's Decision, we shall issue a broad cease and desist order to prevent the Respondent from committing future violations in its disputes with White and other primary employers.[13]

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[12] *Bernard Samoff, Regional Director, et al.* v. *Local No. 825, International Union of Operating Engineers, AFL-CIO,* Civil No. 66-66, consent decree entered on February 1, 1966, by U.S. District Court for the District of New Jersey. See also this Board's Decision and Determination of Dispute, *Local 825, IUOE (Utilities Line Construction Co., Inc.),* 159 NLRB No. 131.

[13] See *Local 825, International Union of Operating Engineers, AFL-CIO (United Engineers & Constructors, Inc.),* 138 NLRB 279, 280, enfd. 332 F. 2d 478 (C.A. 3).

Additional Conclusions of Law

1. By inducing and encouraging the employees of Chicago Bridge and Poirier to engage in work stoppages, and by threatening, coercing, and restraining these employers and Burns with an object in each case of forcing or requiring Chicago Bridge and Poirier to cease doing business with Burns, and with a further object of forcing or requiring Burns to cease doing business with White, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

2. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Upon the entire record in these cases and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Local No. 825, International Union of Operating Engineers, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Engaging in, or inducing or encouraging any individual employed by Chicago Bridge & Iron Co., Poirier & McLane Corporation, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any services; or threatening, coercing, or restraining Chicago Bridge & Iron Co., Poirier & McLane Corporation, Burns & Roe, Inc., or any other person engaged in commerce or an industry affecting commerce, where, in either case, an object thereof is to force or require Chicago Bridge & Iron Co., Poirier & McLane Corporation, or any

other person, to cease doing business with Burns & Roe, Inc., or any other person, or to force or require Burns & Roe, Inc., or any other person to cease doing business with White Construction Company, or any other person.

(b) Engaging in, or inducing or encouraging any individual employed by White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any services; or threatening, coercing, or restraining White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, Burns & Roe, Inc., or any other person, where, in either case, an object thereof is to force or require White Construction Company, or any other person engaged on the Oyster Creek, New Jersey, project, to assign any work to employees who are represented by the Respondent, rather than to employees who are represented by another labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix".[14] Copies of said notice, to be furnished by the Regional Director for Region 4, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and be

[14] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail copies of said notice to the Regional Director for posting by White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, and Burns & Roe, Inc., these companies willing, at all locations where notices to their respective employees are customarily posted.

(c) Notify the Regional Director for Region 4, in writing, within 10 days from the date of this Decision, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C.

Frank W. McCulloch, Chairman

John H. Fanning, Member

Gerald A. Brown, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO ALL MEMBERS

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT induce or encourage any individual employed by CHICAGO BRIDGE & IRON CO., POIRIER & MCLANE CORPORATION, or any other employer, to engage in a strike or a refusal in the course of his employment to perform any services; or threaten, coerce, or restrain the above-named companies, and BURNS & ROE, INC., or any other employer, where an object in either case is to force or require CHICAGO BRIDGE & IRON CO., POIRIER & MCLANE CORPORATION, or any other employer, to cease doing business with BURNS & ROE, INC., or any other employer, or to force or require BURNS & ROE, INC., or any other employer, to cease doing business with WHITE CONSTRUCTION COMPANY, or any other employer.

WE WILL NOT induce or encourage any individual employed by WHITE CONSTRUCTION COMPANY, CHICAGO BRIDGE & IRON CO., POIRIER & MCLANE CORPORATION, or any other employer, to engage in a strike or a refusal in the course of his employment to perform any services; or threaten, coerce, or restrain the above-named companies, and BURNS & ROE, INC., or any other employer, where an object in either case is to

force or require WHITE CONSTRUCTION COMPANY, or any other employer engaged on the Oyster Creek, New Jersey, project, to assign any work to employees represented by LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, rather than to employees represented by another labor organization, except insofar as any such action is lawful under Section 8(b)(4)(D) of the Act.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO
(Labor Organization)

Dated ---------- By ----------
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the day of posting, and must not be altered, defaced, or covered by any other material.

If members have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1700 Bankers Securities Building, Walnut & Juniper Streets, Philadelphia, Pennsylvania, 19107 (Tel. No. 597-7601).

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
Division of Trial Examiners
Washington, D. C.

Case No. 4-CC-359

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

and

BURNS & ROE, INC.

Case No. 4-CD-144

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

and

WHITE CONSTRUCTION COMPANY

Leo F. Hannon, Esq., and *Burton B. Subrin, Esq.*, of Philadelphia, Pa., for the General Counsel.

Vincent J. Apruzzese, Esq., of Newark, N. J., for the Charging Parties.

Earl S. Aronson, Esq., for *Thomas E. Durkin, Esq.*, of Newark, N. J., for the Respondent.

Before: *John F. Funke*, Trial Examiner.

TRIAL EXAMINER'S DECISION

Statement of the Case

A charge having been filed by Burns & Roe, Inc., herein Burns, on October 8, 1965, against Local No. 825, International Union of Operating Engineers,

AFL-CIO, herein Local 825 or the Respondent, alleging Respondent violation Section 8(b)(4)(i) and (ii)(B) of the Act and a charge have been filed by White Construction Company, herein White, on November 5, 1965, against Respondent alleging it violated Section 8(b)(4)(i) and (ii)(D) of the Act, the General Counsel issued a consolidated complaint against Respondent alleging violation of said Section.

The answer of Respondent denied the commission of any unfair labor practices.

This proceeding with all parties represented was heard before me on January 6 and 7, March 31, April 1 and May 16, 1966, at Philadelphia, Pennsylvania.[1] At the conclusion of the hearing the parties were

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[1] The hearing was originally scheduled for December 7, 1965. At the request of counsel for the Respondent the hearing was rescheduled by the Regional Director for Region Four on January 6. On that date the Examiner recessed the hearing until January 7, 1966, at request of counsel for Respondent made through the General Counsel. On January 7, no representative of the Respondent appeared and the hearing was opened, testimony taken and the hearing closed. On January 25, counsel for Respondent, Thomas E. Durkin, Jr., moved to reopen the hearing and, the General Counsel not opposing the motion, the motion was granted by the Trial Examiner by order of February 8, and the date of the reopened hearing was fixed for February 24. The order limited the reopened hearing to cross-examination of the General Counsel's witnesses and to the testimony of Respondent's witnesses and Respondent's documentary evidence. By agreement of the parties the reopened hearing was again postponed to March 21 and, at request of the counsel for the Charging Parties it was again postponed until March 31. At the conclusion of the hearing on April 1, two witnesses under subpena by Respondent failed to appear (one due to illness) so the hearing was recessed indefinitely. The hearing was reopened on May 16, by agreement of the parties and concluded on that date.

granted leave to file briefs and briefs were received from the General Counsel.[2]

Upon the entire record and from my observation of the witness, including their demeanor while testifying, I make the following:

Findings and Conclusions

I. The business of the Companies involved

Burns is a New Jersey corporation engaged as engineering constructor for Jersey Central Power & Light Co., at a nuclear power plant at Oyster Creek, New Jersey. During the course of the construction of the Oyster Creek plant Burns purchased materials valued in excess of $50,000 annually from points outside the State of New Jersey.

White is a New York corporation engaged as a subcontractor for Burns at Oyster Creek in the construction of a reactor plant at the site. During the course of construction of this plant White has purchased materials valued in excess of $50,000 annually from points outside the State of New Jersey.

At all times material herein Porier & McLane Corporation, herein Porier, and Chicago Bridge & Iron Co., herein Chicago Bridge, have been engaged as subcontractors for Burns at Oyster Creek.

Burns, White, Porier and Chicago Bridge are engaged in commerce within the meaning of the Act.

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[2] A brief was received from the General Counsel on January 25, following the close of the hearing on January 7. At the conclusion of the reopened hearing the General Counsel was given leave to file a supplemental brief and counsel for the Respondent leave to file a brief. A supplemental brief was received from the General Counsel July 1.

II. The labor organizations involved

Respondent and Local Union No. 350, International Association of Bridge, Structural & Ornamental Ironworkers, herein the Ironworkers, are labor organizations within the meaning of the Act.

III. The unfair labor practices

A. *The facts*

1. Background

In September 1964, Burns started construction of a multimillion dollar nuclear power generator plant at Oyster Creek, New Jersey, for Jersey Central Power and Light Company. Burns was the architect engineer and general contractor but employed no construction workers. Construction was subcontracted to White (construction of the reactor building), to Chicago Bridge (construction of compression chambers, containment vessel and suppression chambers for the reactor) and to Porier (construction of the turbine structure, intake and discharge structures).[3] All the operating engineers on the job were represented by Local 825. Neither Burns nor White had a contract with Local 825, Chicago Bridge and Porier did. Burns had a contract with the International Union of Operating Engineers, and both Burns and White were members of the Building Contractors Association of New Jersey which had had contracts with Local 825 prior to 1963. On January 9, 1964, the National Labor Relations Board in *Local 825, Operating Engineers*, 145 NLRB 952, found Respondent in violation of Section 8(b)(1) and (3) of

[3] There were other subcontractors who were not involved in the dispute.

the Act for attempting to bargain unilaterally with the individual members of the Association.[4]

2. The work stoppages on October 1

Robert C. Kylberg, general superintendent for White until the middle of January 1966, testified that discussion as to the assignment of an electric welding machine to be used at Oyster Creek by White started in August 1965, before White commenced operations at the site. These discussions were conducted with the contractors association (presumably the Building Contractors Association) and it was decided to give the assignment to the Ironworkers. Kylberg testified that this decision was arrived at by "consensus."

Robert A. Escher, president of White, testified that early in September (White started on the job on September 1, 1965), he had a meeting with representatives of the various crafts to discuss the job in general and among those present were Peter Weber, president of Local 825, and T. J. Norton, business agent for the Ironworkers. There was, according to Escher, no discussion of the operation of the electric welding machine which did not arrive at the jobsite until on or about September 20.

Chris Gunderson, construction superintendent for White at Oyster Creek, testified that when White installed the electric welding machine at the jobsite in September he was approached by Bill Bonatz, job steward for Local 825, and Hank Behrend, lead engineer for Porier, and was told he needed an engineer to push the buttons which started and stopped the

[4] The Board issued a supplemental decision in this case on February 2, 1966, which did not relate to or affect the Board's 8(b)(1) and (3) findings.

machine.[5] Gunderson called his office and was told that the work had been assigned to the Ironworkers. When or where Gunderson reported this to Bonatz and Behrend is not disclosed but on September 30 Gunderson was again approached by them and told they were "to knock the men off the crane" (White at this time had one crane operating with an engineer and an oiler) and gave him three copies of an agreement with Local 825 for White to sign.[6]

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[5] Respondent concedes that Bonatz was an agent of Local 825. It does not concede that two lead engineers, Behrend for Porier and Illario for Chicago Bridge, were agents. A lead engineer, also called a master mechanic, is provided by and designated by Local 825 when five or more engineers are employed by a contractor at a jobsite. The duties of a lead engineer are defined in Local 825's contract (General Counsel's Exhibit No. 10) Article II, section as follows:

> He shall be responsible for the performance of all duties of Engineers, Apprentice Engineers, Repair Mechanics, Oilers, Firemen, Maintenance Engineers, and other employees under his jurisdiction under the direction of the Employer.
>
> He will not be allowed to operate an Engine, only in the temporary absence of the regular engine. He shall have complete supervision over all repairs made on all machines and other automotive equipment used, when such repairs are done on the job.

The testimony in this case, however, establishes that Behrend and Illario participated with Bonatz in submitting demands upon the contractors, that they warned the contractors when stoppages were to occur and told the contractors what the causes of dispute were. It was Behrend and not Bonatz who call the Newark office of Local 825 when the first walkout occurred. Having joined with the job steward and having displayed authority equal to his when disputes and stoppages arose I think it clear that they acted as agents of Local 825 and there is no evidence that Local 825 ever repudiated this authority.

[6] General Counsel's Exhibit No. 10.

According to Gunderson his engineer and oiler stopped work at 10 a.m. on September 30 and did not return to work until about 1 p.m. on October 1.[7]

Giles Willis, resident construction manager for Burns at Oyster Creek, testified that on September 29, 1965, he met in his office at the jobsite with Bill Bonatz and Hank Behrend who told him that members of Local 825 employed by subcontractors at the jobsite had taken a vote to cease work unless Burns signed a contract with Local 825. On the next day Bonatz, Behrend and Bobbie Illario saw Willis, and Illario give him three copies of a standard Local 825 contract[8] and told him that unless Burns signed them all the members of Local 825 employed at Oyster Crek would walk off.[9] The following day, October 1, at 8 a.m. Bonatz, Behrend and Illario again met Willis and asked if Burns had signed that contract and when Willis replied in the negative they left his office. Willis saw them proceed to the parking lot outside the gate where the engineers were gathered and after what appeared to be some discussion the engineers left.

R. T. Daricek, superintendent for Chicago Bridge, testified that on September 30 he met Bonatz and asked him if the rumors were true that the engineers

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[7] Whether or not White's engineers quit on September 30 the engineers employed by Chicago Bridge and Porier worked that day.

[8] General Counsel's Exhibit No. 4. This exhibit is the same as General Counsel's Exhibit No. 10 which was submitted to White for signature. Both are copies of Local 825's A.G.C. contract.

[9] Although this remark is denied by Illario, I found Willis to be a completely credible witness and I accept his testimony on this point.

would not work the following day and was told by Bonatz that if Burns did not sign a contract with Local 825 the following morning no engineers would work. When Daricek protested that Chicago Bridge was under contract with Local 825 Bonatz told him that all the contractors must have contracts.

Behrend and Bonatz testified that this stoppage took place after the members of Local 825 employed on the job (approximately 35) held a meeting in the Porier shanty on September 28 and expressed disagreement with the policies of Burns and White. Their disagreement with Burns was directed to the failure of Burns to enter into a contract with Local 825 and with White to its failure to contract with Local 825 and with its assignment of work on the welding machine to the Ironworkers. It was the testimony of both witnesses that this was a spontaneous reaction on the part of the members and was not directed nor instigated by any official of Local 825. The members did not go to work on the morning of October 1.

Behrend testified that when the men failed to go to work he called the office of Local 825, spoke to a clerk and informed him of the work stoppage. Subsequently he received a call from Peter Weber, business manager of Local 825, to get the men back on the job "right away." Behrend complied with instructions, made several telephone calls, contacted Bonatz in a restaurant and the work was resumed. There is no evidence, apart from Behrend's testimony that Weber told him the matter had been settled, as to why Weber told him to get the men back to work. (Weber did not testify at the hearing.)

3. The stoppage on October 7

Gunderson testified that on October 6 he still had one engineer and an oiler working for him and that

on October 7 neither "showed up." Gunderson called Local 825 at Newark and asked for replacement for the next day. The next day an engineer and oiler appeared at the site, told him they were going to check with the other engineers before going to work and he "didn't see them since." On October 12 the engineers employed by White returned to work. There is no explanation in the testimony of either Gunderson, Kylberg nor Escher, as to the reason for the stoppage nor for the return.

Willis, however, testified that at about 4 p.m. on October 6 Bonatz and Illario came to his office and told him that unless an operating engineer was assigned to the welding machine there would be no engineers at work the following day and Illario again brought up the failure of Burns and White to sign contracts with Local 825. On that day Burns submitted the dispute over the work assignments to the National Joint Board for the Settlement of Jurisdictional Disputes. (General Counsel's Exhibit Nos. 5 and 6.) Willis told them there would be no change in the assignment unless it was by the Joint Board.

Telghman Suffrecal, general superintendent for Porier, testified that he had 20 operating engineers working on October 6 and that Behrend, shop steward for his engineers,[10] told him he might or might not have engineers the next day. On October 11 Suffrecal again saw Behrend who told him the engineers would return on the 12th. He admitted that Local 825 had no dispute with Porier but that it did

[10] Suffrecal was apparently confused since the record is clear that Bonatz was shop steward for all engineers employed at Oyster Creek and that Behrend was lead engineer for Porier. Suffrecal subsequently corrected this testimony.

have a dispute with Burns and with White.[11] Behrend gave him no other reason for the stoppage. Porier's engineers worked continuously thereafter.

Langlinais, project manager for Chicago Bridge, testified that his engineers did not work on October 7 and that on October 8 he had a conversation with Bonatz in which Bonatz told him that the stoppage was the direct result of the welding machine assignment and the fact that Burns and White did not have a contract with Local 825. The engineers returned on October 12 and worked thereafter. There was no dispute between Chicago Bridge and Local 825.

The only testimony by any representative of Local 825 relating to this stoppage is that of Bonatz. He testified as follows:

Q. Correct. Now on or about October 6, 1965, did you say to anyone that unless an operating engineer was assigned to the welding machine there would be no operating engineers on the job the following day?
A. Not that I can remember.
Q. There was a work stoppage, was there not, sir, on or about October 7?
A. I believe so, yes.
Q. How did this work stoppage come about, do you know?
A. I believe they started the welding machine.

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[11] This statement was denied by Behrend and was the subject of lengthy cross-examination when Suffrecal was recalled on March 31, 1966. Despite Suffrecal's evasive and confusing testimony on the latter date I credit this statement chiefly because the record is barren of any conflict between Porier and Local 825 and the statement was one which would quite likely have been made. Suffrecal was clear and convincing on direct and I credit his testimony on direct.

Q. Now after the welding machines were started, what happened?
A. The men walked off.
Q. Did you tell the men to walk off?
A. No sir.
Q. Well, when the men walked off was there a meeting?
A. No, I think the meeting was prior to that.
Q. When, sir?
A. A week maybe.
Q. This would be the meeting you discussed back on or about October 1 or on or about September 29?
A. I believe so.

Bonatz' statement that he believed the men walked off on this date because White started operating the welding machine may have been made in confusion as to dates. There is no evidence that the machine was started on October 7 and subsequent testimony indicates that the machine was first operated by an ironworker on November 4. (It may have been operated by engineers for 2 days prior to that date.)

4. The work stoppage on November 4

On October 20 the Joint Board notified the parties to the dispute over the welding machine that there was no reason to disturb the assignment of work on the welding machine to the Ironworkers. (General Counsel's Exhibit No. 7.) On October 26 a meeting was held at the jobsite to discuss the award. Kylberg met with Weber, Behrend, Bonatz and Gatti [12] and went to lunch with Weber and Gatti. Weber told Kylberg that the Joint Board award was all wrong and that the assignment of the welding machine

[12] Gatti was a member of Local 825.

meant a great deal to him. He told Kylberg that if he would work with Local 825 it would be advantageous and that if not there would be complications. According to Kylberg he pointed to a crane a few feet away, asked him how he would like to have three men on the crane instead of two. He also asked him how he would like to have a 30-hour week with triple overtime.[13] President Escher of White was at that time on a business trip and it was agreed to withhold final decision until his return. There is nothing in the record to indicate that Escher had any conversation with Weber after his return until December 1.

Gunderson testified that on November 4 he started the welding machine and that his crane operators walked off and surrounded the machine and it was not operated that day.[14] At this time Bonatz came to him and asked if he had signed a contract with Local 825. At this time the witness' testimony was interrupted and he did not give the remainder of the conversation. Gunderson stated that on the next day he again started the machine and it was again surrounded by his engineers and was not operated. On November 8 a temporary injunction was granted by the District Court (General Counsel's Exhibit No. 11) restraining Respondent from striking, etc., to compel White to assign the work of starting and stopping electric welding equipment at Oyster Creek

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[13] On cross-examination counsel for Respondent attempted to draw a distinction between the use of the words "would" and "could" in this conversation. The distinction, to the extent it exists, is that between a direct and implied threat, a distinction not relevant in Section 8(b)(4).

[14] At this time, according to Gunderson, he employed four engineers, Cherry, Bonatz and Gatti and one whose name he could not recall. These were the men who surrounded the machine.

to employees represented by Respondent rather than to members of any other labor organization. Gunderson could not remember when the men resumed work.

Bonatz testified that we was working on the crane on November 4 and that when the welding machine started he joined "some of the fellows around the machine." He admitted the machine had been shut off but did not know who did it. He stayed at the welding machine only a few minutes but did not return to his crane. While he testified that the crane was not working he admitted that he did not believe there was anything wrong with it. He did not work November 4 or 5 but again there is no evidence to show when or why he returned.

5. The concrete pump

On November 1 White brought an electric pump to the jobsite to be used for pouring concrete. Gunderson set the pump on November 15 and Bonatz told him he would need an engineer to operate it. Gunderson agreed and told Bonatz to send one out the next day as he wanted to pour on the 17th. On the 16th Illario came out with two additional engineers to act as standbys on the pipe running from the pump and announced that since there were now five engineers on the job he was lead engineer. Gunderson refused to employ the engineers on the ground they were not needed. The next day, the 17th, the same dispute continued and no engineer operated the concrete pump. On that day Ed Smith, Ironworker foreman, told Gunderson the wires on the electric welding machine had been cut and oil poured into the armature. There is no evidence to establish who sabotaged the welding machine. At about noon the other engineers employed by White walked off the job.

Gunderson testified that on either the 16th or 17th [15] he spoke with Illario and that Illario "mentioned the fact that this was more or less because of the electric welding machine being in operation." Since the only dispute at this time was over the number of engineers to be employed and since Illario, who was bringing out the additional engineers, was the only person directly involved in the dispute there can be no doubt that Illario was referring to the pump dispute and attributing it to the welding machine dispute where an injunction prevented a stoppage.

Robert Escher, president of White, testified that he called Weber at his home on December 1, to find out how to get the men back to work. He told Weber in the course of a conversation which lasted over an hour that he had heard that if he took the electric equipment (the welding machine) off the job and put in gasoline equipment that White could go back to work. According to Escher, Weber answered, "Yes, but you have got to sign a contract." Escher told him he could not sign a contract because there had been a dispute between them ever since 1962 over this. (This refers to the efforts on the part of Local 825 to have members of the Building Contractors Association sign individual contracts.) [16] When Escher tried to discuss the award of the Joint Board Weber told him they (the Joint Board)

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[15] While Gunderson testified that it was either on the 16th or 17th and it is a fact that Gunderson and Illario talked on both days the nature of the remark indicates it was probably on the 17th.

[16] When Escher inquired why Local 825 was supplying engineers on three other White projects in New Jersey, Weber told him he would pull them off the next day. These engineers were never pulled off the White jobs.

"didn't know what the hell they were talking about, that this was his work and had been his work historically and that they were just a bunch of dopes and he wasn't going to abide by it and that it meant four hundred new jobs in the State of New Jersey." Weber denied that Norton, president of the International Union of Operating Engineers, had ordered him to put the men back to work, and added that he "didn't have to." Again Weber mentioned such demands as 30-hour week, triple overtime, and four men on a crane.

The engineers who walked off on November 17 returned to work on either December 21 or 22. Again there is no explanation given in the record as to the reason for this return.

B. *Conclusions*

1. Credibility

Credibility is an issue in the case and I have already made certain specific findings which need not be repeated here. It must be noted, however, that two of the General Counsel's witnesses, Suffrecal of Porier and Gunderson of White, who testified forthrightly and without reservation on January 7, were recalled on cross-examination on March 31. On this occasion, confronted for the first time by a representative of the Respondent, their testimony became both evasive and confusing. It was apparent from their conduct on the stand and the hesitancy with which they answered that they were reluctant to testify adversely to the interests of the Respondent, generally regarded as one of the most powerful local labor organizations in the East. I conclude that their testimony given on January 7 when they were free from any pressures, however imaginary in nature,

was truthful. I also base this finding on the fact that this testimony corroborates and fits the pattern of the testimony of other witnesses for the Charging Party whom I have credited in full and who did not weaken under cross. Apart from these two, the General Counsel's witnesses were forthright and credible on both direct and cross-examination.

I might also note that much of the testimony of the witnesses called by Respondent was confusing if not evasive and that no specific finding can be made on much of it.

Where I have credited the testimony of a witness as to a specific conversation I have, *a fortiori*, discredited testimony of other witnesses which was contradictory whether or not such a specific finding has been made.

2. Violations of Section 8(b)(4)(B)

The complaint, paragraphs 7(a) and (b), alleges that the conduct of Respondent as above set forth, *supra*, had among its objects the forcing of Chicago Bridge, Porier and White to cease doing business with White. There is not a scintilla of evidence to support these allegations. On this record Respondent may be found to have two objectives, (1) to force Burns and White to agree to Local 825's contract in violation of the Board's Order in the *Building Contractors'* case, *supra*, and (2) to force White to assign the operation of the welding machine to its members. Neither objective would have been furthered by a general cessation of business among the parties. Local 825 never made any request upon Chicago Bridge, Porier or White to cease doing business with Burns. Such a request would have been totally irrational for it would have simply forced Burns to employ other subcontractors which, with

the possible exception of White, would not have furthered either interest of the Respondent. But Respondent never indicated it wanted White off the job—it wanted to harass White to gain compliance with its requests. Nor was any demand made upon Burns to cease doing business with White. Respondent never suggested that cancellation of the contract would have served its purpose. It did inform Burns, through persons I have found to be its agents, that the failure of Burns and White to sign contracts and the assignment of the work on the job were the sources of the dispute. All Respondent wanted was the work, not a substitution of contractors nor a termination of contractual relationships between the contractors.

The General Counsel attempts to distinguish this case from *Local 825, International Union of Operating Engineers, AFL-CIO (Nichols Electric)*, 138 NLRB 540, enfd. denied, 326 F. 2d 218 (C.A. 3), by stating "there is ample evidence to show Respondent sought these objectives." The brief, which is characterized elsewhere by specificity, give no citation of fact or testimony to support this conclusion and a search of the record reveals no testimony to support it.[17] Neither the General Counsel or any other counsel should so mislead a Trial Examiner. In this case it was necessary for the Trial Examiner to waste his time in a painstaking recheck of the record in search of this alleged "ample evidence." Attorneys for the General Counsel should regard themselves as bound by the Canon of Ethics of the Amer-

[17] The Board has, however, specifically supported misleading briefs on the part of the General Counsel and has reprimanded a Trial Examiner for calling attention to one in *S. Klein's Department Stores, Inc.*, 149 NLRB 466.

ican Bar Association and it is lamentable that the admonition of a distinguished attorney to his junior associates that they would meet no more unscrupulous adversary in court than counsel for the Government should ever find support.[18]

3. Violations of Section 8(b)(4)(D)

The Respondent has failed to file a brief in this case so its contentions and defenses are subject to speculation on the part of the Trial Examiner. Based solely on the lines of interrogation taken by counsel for the Respondent upon examination of its witnesses and cross-examination of the General Counsel's witnesses I find those defenses to be:

(1) That the work stoppages, at least those of October 1 and 7, were neither authorized nor directed by the Respondent but were spontaneous on the part of the employed members themselves in resentment of the fact that there were no contracts between White and Burns and that operation of the welding machine had been assigned to the Ironworkers.

(2) That the award of the work on the welding machine to the Ironworkers was invalid in that the dispute was submitted to the Board by Burns and not by White and that Burns was not a party to the dispute.

(3) That the work traditionally and historically had been performed by Operating Engineers and not by the Ironworkers.

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[18] Apart from this the case was ably tried and ably briefed by counsel for the General Counsel and as to this specific criticism it must be remembered that counsel operate under direction.

(4) That the Ironworkers had made no claim to the work.

This proceeding does not follow a Section 10(k) hearing but is brought pursuant to the "Alternative Procedure" as set forth in the Board's Rules and Regulations, Series 8, as amended, Section 102.93. This section reads:

> Sec. 102.93 Alternative procedure.—If, either before or after service of the notice of hearing, the parties submit to the regional director satisfactory evidence that they have adjusted the dispute, the regional director shall dismiss the charge and shall withdraw the notice of hearing if notice has issued. If, either before or after issuance of notice of hearing, the parties submit to the regional director satisfactory evidence that they have agreed upon methods for the voluntary adjustment of the dispute, the regional director shall defer action upon the charge and shall withdraw the notice of hearing if notice has issued. If it appears to the regional director that the dispute has not been adjusted in accordance with such agreed-upon methods and that an unfair labor practice within the meaning of section 8(b)(4)(D) of the act is occurring or has occurred, he may issue a complaint under section 102.15, and the procedure prescribed in sections 102.9 to 102.51, inclusive, shall, insofar as applicable, govern; and sections 102.90 to 102.92, inclusive, are inapplicable.

It has been found that on October 6, 1965, Burns submitted the dispute respecting work on the welding machine to the Joint Board and that on October 19 the Board decided not to disturb the assignment of this work to the Ironworkers. On October 20 it so

notified the parties. Burns, White [19] and Local 825 were both bound by Joint Board rulings.

At the hearing the Trial Examiner made certain rulings which are hereby affirmed. He stated that he would not examine the procedures before the Joint Board or determine whether or not Burns was entitled to submit the dispute to that Board. Since all parties appeared the Examiner felt that this issue could not be raised in the instant proceeding. Neither would the Examiner permit the merits of the assignment to be attacked in this proceeding. Whether the work had been traditionaly performed by Operating Engineers was not an issue before the Trial Examiner since this was not a 10(k) proceeding. These rulings would eliminate defenses (2) and (3), *supra*.

The fact that the Ironworkers had made no claim to work is equally irrelevant. As the court said in *Carpenters et al.* v. *C. J. Montag & Sons*, 335 F. 2d 216, 221 (C.A. 9):

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[19] The contract between Burns and White contained the following clause:

Article 31 Labor Relations

> The subcontractor shall be responsible for its own labor relations with any trade or Union representing his employees and he shall negotiate and seek to adjust all disputes between himself and his employees or anyone representing such employees. The same responsibility shall extend to the Lower Tier subcontractors. All contractors in lower Tier subcontractors shall in the settlement of any jurisdictional dispute be bound by the Rules and Procedures of the National Joint Board where the settlement of jurisdictional disputes and shall make assignments in accordance with such Rules and Procedures.

Escher testified that White had in the past submitted jurisdictional disputes to the Joint Board

> The fact that one union has the jobs and holds on to them in a polite, non-belligerent manner while the other union uses forbidden tactics to in an effort to get them, or some of them, does not mean that what Congress regarded as the evils of a jurisdictional dispute are not present.

The crux of this case lies in the contention that the work stoppages were not authorized by Local 825. As to the work stoppage of October 1, I would find that the General Counsel has not sustained his burden of proof to show that this stoppage was authorized or directed by Local 825 or its agents.

There is nothing in the record to indicate that either Bonatz, Behrend, or Illario were not conveying to Willis the feeling of the men when they advised him that there would be a stoppage on October 1 if Burns did not sign a contract. Whether this feeling had been generated among the men by the agents of Local 825 is open to question but there is insufficient evidence to support such an inference. Among the major difficulties in resolving issues in labor-management relations disputes is the fact that most decisions, both by labor and management, are made *in camera* and full disclosure of the motives of decisions so reached is seldom, if ever given. If the motive is unlawful the more realistic term is never. If simple truthfulness and honesty were ever to prevail the decisional-making process would be an easy one, but truthfulness and honesty are not commonly found when a party is charged with violations of the Act. If people were honest there would be telephones at racetracks. A fact not disputed which supports the conclusion reached is that Behrend reported the walkoff to Newark on the morning of October 1 and that shortly thereafter he was ordered by Weber to get the men back to work. I do not view this walk-

out without suspicion but resort must be taken to the familiar cliche that suspicion is not proof.[20]

A different conclusion must be reached as to the walkout on October 7. I have credited the testimony of Willis that late in the afternoon of October 6 he was approached by Bonatz and Illario and told that unless an engineer was assigned to the welding machine the men would not work. Suffrecal of Porier was told by his lead engineer, Behrend, on October 6 that he might or might not have men working the next day. Langlinais of Chicago Bridge was told by Bonatz on October 8 that the stoppage was the direct result of the failure of White to assign the welding machine to the members of Local 825. Unlike the work stoppage of October 1 none of Local 825's agents testified that the stoppage was the result of a vote of the members.[21] Since this is that kind of case in which the issues must, for the most part, be decided on rather tenuous inferences I find, in view of the warnings given by union representatives, that the walkout was authorized.[22] It is true that these same representatives gave the same warnings of a prospective walkout on October 1 but those warnings were accompanied by statements that the members

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[20] As the court stated in *N.L.R.B.* v. *Local 217, Plumbers, etc. (The Carvel Company)*, 62 LRRM 2257, decided May 26, 1966 (C.A. 1), there is no violation unless the employees are induced and a totally self-generated cessation of work would not be proscribed.

[21] While Behrend testified that he did not tell the men to walk off on October 6 and that he believed the walkout was the result of the vote taken a week earlier his testimony is far from conclusive.

[22] The inference relates only to the authorization of the walkout. The purpose of the walkout was clearly stated by Local 825's agents.

were making the decision. The warnings which related to the walkout of October 6 did not attribute the decision to the men. It does not seem likely that members of a well disciplined union (and this characterization is based on a review of Board decisions involving Local 825 and this Examiner's recollection of testimony in four cases which he heard in which Local 825 was the Respondent) would again strike on their own initiative after having been ordered back to work on October 1, an order with which they immediately complied.

The motive for the walkout on November 4 is manifest. We have a history of the dispute between Local 825 and the two Charging Parties by that date going back to the time the machine was first installed at Oyster Creek. More importantly we had the job-site meeting with Weber on October 26 in which Weber told Kylberg that the Joint Board's assignment was all wrong and that the assignment of the welding machine operation meant a great deal to him, a statement which was accompanied by thinly veiled threats to impose burdensome conditions on White. When the machine was first operated by an ironworker on November 4, White's four engineers promptly ceased work and surrounded the machine. At or about the time the enginers ceased work Bonatz went to Gunderson and asked him if White had signed the contract with Local 825.[23] Gunderson told him, "I did not have."

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[23] This contract, submitted to both Burns and to White (General Counsel's Exhibits Nos. 4 and 10) contains an addendum which includes in the job classifications the work on both gas and electric welding machines as part of the equipment to be operated by members of Local 825. A signing of the contract would therefore accomplish both objectives sought by Respondent—contractual status and the right to operate the machine.

The men did not return to work until after the District Court injunction issued on November 8. Nothing could be clearer than that this walkout was proscribed by Section 8(b)(4)(D) of the Act and that the methods employed were in violation of Section 8(b)(4)(i) and (ii)(D).

Such doubt as might exist that the walkout on November 17, when the concrete pump was to start operating, and the demand for additional engineers to operate the pump is resolved by the credited testimony of Gunderson and Escher. Gunderson testified that while he was disputing the number of engineers required to operate the pump with Illario (Gunderson thought one sufficient while Illario was demanding three) Illario stated that the requirement was more or less due to the electric welding machine dispute. Escher, anxious to get the men back to work, called Weber on December 1 and in the course of a lengthy conversation was told that if he replaced the electric machine with a gasoline welding machine (equipment which would be operated by engineers) and signed a contract, the men would go back. While it may have been no more than a coincidence that the wires on the welding machine were cut and oil poured into its armature on that same day, this coincidence does nothing to diminish the General Counsel's case.

In reaching the conclusion that Respondent violated Secton 8(b)(4)(i) and (ii)(D) in these three specific work stoppages as above found I have considered the fact that neither Burns nor White had any difficulties with Local 825 until after the welding machine was brought to the jobsite about September 20. White, without a contract, was able to obtain engineers from Local 825 and there was no hint until after September 20 that the failure to contract would

occasion trouble on the job. During this entire period White was engaged on three other projects in New Jersey which were not shut down, another indication that the Oyster Creek problem stemmed from the welding machine.

While the Board (Member Leedom dissenting) has held that the mere giving of notice of prospective strike action against a subcontractor to the prime contractor is not a violation of Section 8(b)(4)(ii)(B), *Local Union No. 83, Teamsters, etc. (Marshall & Haas)*, 133 NLRB 1144. I find that case clearly distinguishable from the instant case. In *Marshall & Haas* the prime contractor was not a party to the dispute with the subcontractor and the notice was given to show that the possibility of a stoppage might occur on the job and, presumably, to offer it the chance to settle the dispute. Here Burns was a primary party to the dispute and the threats made to White and the work stoppages were directed to the failure on the part of Burns as well as White to sign a contract. Under such circumstances I find that the threats and coercion directed to White were directed equally to Burns. It was only the fortuitous circumstance that Burns employed no engineers at the jobsite that precluded it from suffering stoppages. I shall therefore include Burns in the Recommended Order.

IV. The remedy

Having found the Respondent engaged in certain unfair labor practices I shall recommend that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.

The General Counsel has requested that a Board Order issue in this case in view of prior violations of the Act by Respondent and its failure to comply

with Board Orders.[24] I agree and shall recommend an order in the form requested by the General Counsel.[25]

Upon the foregoing findings and conclusions and upon the entire record in this case, I make the following:

Conclusions of Law

1. By inducing and encouraging individuals employed by Chicago Bridge, Porier and White to engage in work stoppages and refusal in the course of their employment to perform any services, by threatening, coercing and restraining Burns, Chicago Bridge, Porier and White with an object in each case of forcing and requiring White to assign the work of operating its electrical welding machine at Oyster Creek to employees engaged as operating engineers who are represented by Respondent and who are not lawfully entitled to such work rather than to employees engaged as ironworkers who were represented by the Ironworkers and were lawfully entitled to such work, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act.

2. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

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[24] See *Local 825, Operating Engineers*, 145 NLRB 952; *Local 825 Operating Engineers*, 140 NLRB 458; enfd. 326 F.2d 213 (C.A. 3); *Local 825, Operating Engineers*, 138 NLRB 279; enfd. 332 F. 2d 478 (C.A. 3); *Local 825, Operating Engineers*, 131 NLRB 452; *Local 825, Operating Engineers*, 120 NLRB 545.

[25] *Local 825, Operating Engineers (United Engineers)*, 138 NLRB 279.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record, it is recommended that Local Union 825, International Union of Operating Engineers, AFL-CIO, its officers, agents, representatives, successors and assigns shall:

1. Cease and desist from engaging in, or inducing or encouraging any individual employed by Porier & McLane Corporation, Chicago Bridge & Iron Company, White Construction Company, or by any other persons engaged in commerce or in an industry affecting commerce, to engage in, a strike or refusal in the course of his employment to perform any services, or from threatening, coercing, or restraining the above-named plus Burns & Roe, Inc., or any other persons engaged in commerce, where an object thereof in either case is to force or require White Construction Company, or any employer, to assign any work to employees engaged as operating engineers who are represented by Respondent rather than to employees represented by another labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at its place of business at Newark, New Jersey, copies of the attached notice[26] marked "Ap-

[26] In keeping with Board policy, see *L. L. Glascock, Inc.*, 160 NLRB No. 74, in which the Board revised Examiner Reel's notice to make it unintelligible to the average employee, the attached notice has been drafted with the purpose of similar obfuscation. It might appear, as it seemingly did to the Trial Examiner in *Glascock*, that it would be the policy of the Board to make its decisions clear to those most vitally affected

pendix."[27] Copies of said notice to be furnished by the Regional Director for the Third Region shall, after having been signed by a duly authorized representative of Respondent, be posted by Respondent immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to see that such notices are not altered, defaced or covered by other material. Upon request from the Regional Director, the Respondent shall supply him with a sufficient number of signed copies of said notice for posting by Chicago Bridge, Porier, White and Burns, they willing, at their respective jobsite offices at Oyster Creek and other places of business.

(b) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision and Recommended Order what steps have been taken by Respondent to comply herewith.[28]

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by them, which in this instance would include union members as well as the employers. Such is not the case. The operating engineer who understands this notice has missed his vocation. He should be deciphering the Dead Sea scrolls.

[27] In the event that this Recommended Order be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "A RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

[28] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

(c) It is further recommended that the complaint insofar as it alleges violations of Section 8(b)(4)(i) and (ii)(B) of the Act be dismissed.

Dated at Washington, D. C.

/s/ John F. Funke
JOHN F. FUNKE
Trial Examiner

APPENDIX

NOTICE

To All Members of Local No. 825, International Union of Operating Engineers, AFL-CIO

Pursuant to

The Recommended Order of a Trial Examiner of the

NATIONAL LABOR RELATIONS BOARD

and in order to effectuate the policies of the

NATIONAL LABOR RELATIONS ACT
(As Amended)

we hereby notify you that:

WE WILL NOT induce or encourage any individual employed by CHICAGO BRIDGE & IRON COMPANY, PORIER & MCLANE CORPORATION, WHITE CONSTRUCTION CO., INC., or by any other persons engaged in commerce or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any services, or threaten, coerce or restrain the above-named Companies and BURNS & ROE, Inc., or any other persons engaged in commerce or a business affecting commerce, where an object in either case is to force WHITE CONSTRUCTION COMPANY, or any employer, to assign work to any employees engaged as operating engineers who are represented by LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, rather than to employees represented by another labor organization, except insofar as

any such action is permitted under Section 8(b)(4)(D) of the Act.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1700 Bankers Securities Building, Walnut & Juniper Streets, Philadelphia, Pennsylvania 19107 (Tel. No. 597-7601).

APPENDIX D

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. sec. 151, *et seq.*) are as follows:

Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * *

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

* * * *

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

* * * *

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: * * *

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void: * * *

* * * *

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JOSEPH F. SPANIOL, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM—1969

No. ~~570~~ 42

BURNS AND ROE, INC., and
WHITE CONSTRUCTION COMPANY,

Petitioners,

vs.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, and NATIONAL LABOR RELATIONS BOARD,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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FRANCIS A. MASTRO,
On the Petition.

Commerce Street, Newark, N. J.—Market 3-8611-12

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IN THE

Supreme Court of the United States

OCTOBER TERM—1969

No.

BURNS AND ROE, INC., and
WHITE CONSTRUCTION COMPANY,

Petitioners,

vs.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, and NATIONAL LABOR RELATIONS BOARD,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable, the Chief Justice of the United States Supreme Court and the Associate Justices of the United States Supreme Court:

Intervenors-Petitioners pray that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Third Circuit entered in the above case on May 29, 1969.

The Opinions Below

The N.L.R.B. Trial Examiner's decision was made September 28, 1966. (See Appendix A). The National Labor Relations Board's decision and order was made on February 13, 1967 (see Appendix B) which is reported at 162 NLRB 1617. The Court of Appeals filed its opinion on April 25, 1969 (see Appendix C). The Opinion of the Court of Appeals for the Third Circuit (No. 17180) is reported at 410 F. 2d 5.

Jurisdiction

The judgment of the Court of Appeals for the Third Circuit was made and entered on May 29, 1969. (Appendix D).

An order of the Court of Appeals for the Third Circuit denying the Petition of the N.L.R.B. for a rehearing was made and entered on June 12, 1969. (Appendices E & F).

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

Question Presented

The National Labor Relations Board found that Respondent engaged in unlawful work stoppages on October 1 and October 7, 1965 at Intervenor-Petitioners' 68 million dollar nuclear power generator construction project. It further found that Respondent's strike threats and strikes were in furtherance of a primary dispute between Respondent and Intervenor-Petitioner White Construction Company which company refused to reassign welding machine work at the site to engineers represented by Respondent. The Board concluded that Respondent sought to achieve the assignment of this disputed work by applying economic pressure on neutrals to the distpute—

Intervenor-Petitioner Burns and Roe, Inc., the general contractor, and subcontractors Chicago Bridge and Iron Co., and Poirier and McLane Corporation, with an object of causing a disruption of the business relationship among the various employers at the job site, all in violation of Section 8(b)(4)(i)(ii)(B) of the National Labor Relations Act, 29 U.S.C. Sec. 158(b)(4)(B) (hereinafter called the Act) and made an order accordingly.

The Third Circuit refused to enforce the secondary boycott portion of the Board's order and held that ". . . proof of coercive activity amounting to 'disruption of a business relationship' and aimed at causing a neutral employer to put pressure on a primary employer is insufficient, without more, to establish an effort to compel one employer to 'cease doing business' with the other . . ." within the meaning of the statute. Thus, the Court of Appeals held the object proscribed by Section 8(b)(4)(B) must be a literal and complete cessation of business rather than a disruption of the business relationship. The question presented is:

In order to prove a violation of the secondary boycott provisions of the National Labor Relations Act [Section 8(b)(4)(B)] is it necessary to establish that a union's object is to bring about a total cessation of business between the neutral and primary employer?

Statute Involved

The provision of the National Labor Relations Act of 1947, as amended, involved herein is Section 8(b)(4)(B) of the Act, 29 U.S.C. 158(b)(4)(B), as follows:

> ". . . (b) It shall be an unfair labor practice for a labor organization or its agents . . .

"(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is . . .

"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of Section 159 of this title: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing; . . ."

Statement of the Case

This case arises from a decision of the Court of Appeals for the Third Circuit refusing to enforce an order of the National Labor Relations Board (hereinafter N.L.R.B.) finding in part that Respondent, Local 825, International Union of Operating Engineers, AFL-CIO, violated Section 8(b)(4)(i)(ii)(B) of the Act. Burns and Roe, a general contractor, was engaged to construct a $68 million dollar

nuclear power generating plant for Jersey Central Power and Light Company, a public utility, at Oyster Creek, Forked River, New Jersey. White Construction, Chicago Bridge & Iron and Poirier & McLane were all subcontractors of Burns and Roe at said project. It should be noted that Burns and Roe subcontracted all of its work and employed no direct labor. White Construction employed Ironworkers to do certain welding work at the site and Respondent demanded that Operating Engineers be employed instead. White Construction refused and there followed threats by Respondent against Burns and Roe and threats and actual work stoppages against Poirier and McLane and Chicago Bridge & Iron, all with an object, found the Board, of bringing about a cessation of business within the meaning of the Act, between Burns and Roe and White Construction Company.

The Third Circuit held that the object of Respondent was not to bring about a total and permanent cessation of business between Burns and Roe, Inc. and White Construction Company, but merely to coerce Burns and Roe, Inc. so that Burns and Roe would put pressure upon White Construction to succumb to Respondent's demands. Such an object, said the Court, *i.e.* disruption and stoppages short of a complete and total cessation of business, "however objectionable or deserving of condemnation it may be, falls short of the 'cease doing business' object proscribed by the Act."

In its decision, the Third Circuit cited for comparison the decision of the Court of Appeals for the Fifth Circuit in *N.L.R.B.* v. *Carpenters District Council of New Orleans and Vicinity, AFL-CIO*, No. 25408, decided February 19, 1969 and reported at 407 F. 2d 804 which applied the traditional N.L.R.B. interpretation that proscribed conduct which has as an object a disruption of the business

relationship even though something less than a total cancellation of the business connection is a "cease doing business" object within the meaning of Section 8(b)(4)(B) of the Act.

A. Proceedings Below

1. This case arose from an unfair labor practice charge filed by Burns and Roe, Inc. with the N.L.R.B. on October 3, 1965 (case No. 22-CC-359), against Local 825, International Union of Operating Engineers, AFL-CIO, alleging a violation of Section 8(b)(4)(i)(ii)(B) of the Act and a charge filed by White Construction Company on March 5, 1965 against Local 825, International Union of Operating Engineers, AFL-CIO alleging a violation of Section 8(b)(4)(i)(ii)(D) of the Act. (Case No. 22-CD-144). Only the former charge is at issue here.

2. On September 28, 1966 the Trial Examiner of the N.L.R.B. issued his Decision, finding a violation of Section 8(b)(4)(i)(ii)(D) but dismissing the General Counsel's complaint insofar as it alleged a violation of Section 8(b)(4)(i)(ii)(B) of the Act.

3. On February 13, 1967 the N.L.R.B. issued its Decision and Order adopting the Trial Examiner's Decision insofar as it found a violation of Section 8(b)(4)(i)(ii)(D) of the Act, but reversing his Decision insofar as he failed to also find a violation of Section 8(b)(4)(i)(ii)(B) of the Act.

4. On April 25, 1969 the Court of Appeals for the Third Circuit granted enforcement of only so much of the N.L.R.B.'s Order that pertained to a violation of Section 8(b)(4)(i)(ii)(D) of the Act.

5. On May 29, 1969 the Court of Appeals for the Third Circuit entered its Judgment in this matter.

6. On June 12, 1969 the Court of Appeals for the Third Circuit dismissed a petition for rehearing filed by the N.L.R.B.

B. Factual Background

The essential facts as found by the N.L.R.B. and adopted by the Circuit Court in this case are as follows:[1]

In September, 1964, Burns and Roe, Inc. (herein called "Burns") started construction of a $68 million dollar nuclear power generating plant at Oyster Creek, Forked River, New Jersey for the Jersey Central Power and Light Company. (Appendix A p. 4a). As general contractor, Burns subcontracted all construction work to White Construction Company (herein called "White"), Chicago Bridge and Iron Company (herein called "Chicago Bridge") and Poirier and McLane Corporation (herein called "Poirier"). (Appendix B p. 34a). Burns did not itself employ any construction workers. All the operating engineers on the project were members of Local 825, which had bargaining contracts with Chicago Bridge and Poirier but not with Burns or White. (Appendix B p. 34a). Burns, however, had a national agreement with the International Union of Operating Engineers, and both Burns and White were members of the Building Contractors Association of New Jersey which had contracts with Local 825 prior to 1963.[2]

---

[1] References are to the page of Appendices A and B, the decisions of the Trial Examiner and the N.L.R.B. respectively wherein the facts appear. In this connection it is noted that the decision of the N.L.R.B. adopts the factual findings of the Trial Examiner insofar as they are consistent with its decision and order.

[2] It should be noted that the absence of a contract with the Building Contractors Association of New Jersey was attributable

(Footnote continued on following page.)

White came on the job in the beginning of September, 1965 and assigned the work of starting and stopping an electric welding machine to its ironworker employees who were to use the machine for welding structural steel. When the welding machine was installed at the job site during the week of September 20, Chris Gunderson, White Construction Superintendent, was approached by Bill Bonatz, Job Steward for Local 825 and Hank Behrend, Lead Engineer for Poirier, found by the NLRB to be agents of Local 825 (Appendix B p. 34a) and was told that he needed an operating engineer from Local 825 to push the buttons which started and stopped the machine. (Appendix B p. 35a). Gunderson checked with his office and was informed that the work had been assigned to the Ironworkers. (Appendix B p. 35a). On September 30, Gunderson was again approached by Bonatz and Behrend who told him that they were going "to knock the engineer off the crane," and handed him three copies of an agreement with Local 825 for White to sign. (Appendix B p. 35a). This contract gave Local 825 jurisdiction over all power equipment including electric welding machines; and forbade subcontracting by a party to the agreement unless the subcontractor agreed to perform the work subject to all the terms of the contract. Shortly thereafter,

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(Footnote continued from preceding page.)

to the matters covered in *International Union of Operating Engineers, Local 825, et als. (Building Contractors Association of New Jersey)* 145 NLRB 952, wherein the Board found a refusal to bargain violation to have been commited by Local 825 and which was not enforced by the Third Circuit until August 5, 1966. *NLRB* v. *International Union of Operating Engineers, Local 825, et al. (Building Contractors Association of New Jersey)* (CA 3 Civil No. 15928, (unreported) (Appendix A p. 5a and Appendix B p. 34a). After that enforcement decree a contract did subsequently result.

at about 10:00 a.m. on September 30, the engineer and oiler stopped work. They did not return until 1:00 p.m. on October 1. (Appendix B p. 35a).

At the same time the Union also spoke to other contractors at the job site. On September 29 Bonatz and Behrend visited Giles Willis, resident Construction Manager for Burns, and told him that the members of Local 825 employed by his subcontractors had voted to cease work after October 1 unless Burns signed a contract with the Union. (Appendix B p. 35a). The next day, Bonatz and Behrend returned with Bobby Illario, Lead Engineer for Chicago Bridge, who was also found to be an agent of Local 825 by the NLRB (Appendix B p. 35a). Illario gave Willis copies of the same contract that had been given to Gunderson and repeated that all the operating engineers would walk off the job unless Burns signed by the following morning. (Appendix B p. 35a).

On the same day, September 30, R. T. Daricek, Superintendent for Chicago Bridge, asked Bonatz if the rumors that a work stoppage the following day were true. Bonatz replied no engineer would work for anyone if Burns did not sign a contract with Local 825. When Daricek protested that Chicago Bridge had signed a contract and that it had no dispute with the Union, Bonatz said that all the contractors were required to sign. (Appendix A p. 8a).

The following morning, October 1, the three Union representatives again met Willis and asked if Burns had signed the contract. When Willis replied in the negative, they proceeded to the parking lot and engaged in conversations with the engineers who were gathered there. The engineers employed by White, Chicago Bridge and Poirier then left the area and did not report for work until about 1:00 p.m. (Appendix B p. 35a).

On October 6, Bonatz and Illario told Willis that unless an operating engineer was assigned to the electric welding machine, no engineers would work the following day. Illario who did the talking also brought up the failure of Burns and White to sign contracts with Local 825. Willis informed the Union representative that Burns had a national agreement with the International Union and was not required to sign local contracts, and also told them that any change in the assignment to the ironworkers would have to be made by the Joint Board for the Settlement of Jurisdictional Disputes. The same day, Burns formally submitted the work assignment dispute to the Joint Board for the Settlement of Jurisdictional Disputes (Appendix A, p. 10a).

Poirier's General Superintendent, Telghman Suffrecal, was also warned by Behrend on October 6 that his 20 engineer employees might not work the following day (Appendix A, p. 10a). In response to questioning, Bonatz told Daricek of Chicago Bridge that the engineers would not operate its machines. The operating engineers employed by White, Chicago Bridge and Poirier did not report for work from October 7 until October 11 (Appendix B, p. 38a).

When the engineers failed to show up on October 7, Gunderson called the main office of Local 825 and asked for replacements for the following day. Two men appeared but they insisted on checking with the operating engineers on the job before going to work. They left and did not return.

On October 8, when the strike was in progress Bonatz told Langlinais, Project Manager for Chicago Bridge, that the work stoppage was a direct result of the welding machine assignment and the failure of Burns and White to

sign contracts with Local 825 (Appendix A, p. 11a). When Langlinais protested that Chicago Bridge had a contract with the Union and that the work stoppage was costing it a lot of money, Bonatz suggested that Chicago Bridge "do what Poirier and McLane was doing, bill Burns" for the loss.

Three days later, Behrend told Suffrecal that the engineers might be back the following day, October 12. Upon being questioned by Suffrecal, Behrend admitted that the Union's dispute was with Burns and White and there was no dispute with Poirier. Poirier's and Chicago Bridge's engineers returned to work on October 12 and worked regularly thereafter (Appendix A, p. 11a).

Upon the foregoing facts and the entire record, the Board found a preponderance of evidence established that Local 825, with an object to force or require White to assign the disputed work to engineers represented by the Respondent, induced or encouraged employees employed by White, Chicago Bridge and Poirier to engage in a work stoppage on October 1, 1965 and threatened, restrained or coerced Burns and other employers, all in violation of Section 8(b) (4) (i) and (ii) (D) of the Act (Appendix B, p. 37a). The Board also found that Local 825 was responsible for the strike on October 7, and that by its work stoppages of October 1 and 7, 1965 Local 825 violated Section 8(b) (4) (i) and (ii) (B) of the Act (Appendix B, p. 37a). In reaching this conclusion, the Board noted that Respondent's strike threats and strikes were in furtherance of the Respondent's primary dispute with White who refused to reassign the welding machine work to engineers represented by Respondent. It is equally clear, the Board stated, that the Respondent sought to achieve the assignment of this disputed work by applying economic pressure on neutrals to the dispute—Burns, the

general contractor, and subcontractors Chicago Bridge and Poirier—with an object of causing a disruption of the business relationship among the various employers at the job site (Appendix B, p. 38a). This, the Board concluded, constituted a cease doing business object within the meaning of Section 8(b) (4) (B) of the Act, "although something less than a total cancellation of the business relationship." It found therefore that within the meaning of the Statute, an object of Respondent's conduct was to force Burns to cease doing business with White and to force Chicago Bridge and Poirier to cease doing business with Burns in order to compel Burns to cease doing business with White.

As stated above, the Circuit Court of Appeals for the Third Circuit did not take issue with any of these facts as found by the N.L.R.B. but rather upon these facts held the cease doing business object proscribed by Section 8(b) (4) (B) of the Act was not violated. The difference between the Board and Court decisions lies in the interpretation of the Act— Whether a disruption of the business relationship, as the Board holds, is a "cease doing business object," or must it be nothing short of a total and literal cessation of the relationship as the Court below held. Accordingly, the Court refused to enforce that portion of the Board's Order finding a violation of Section 8(b) (4) (i) (ii) (B) of the Act.

C. Federal Jurisdiction

Federal Court jurisdiction in this matter is invoked under 29 U.S.C. 160(e) and (f) which provides for enforcement of orders of the N.L.R.B. by the appropriate Court of Appeal wherein the unfair labor practice in question arose and which provides also for review by this Court of the judgment and decree of the Court of Appeal upon writ of *certiorari* as provided in 28 U.S.C. 1254.

Reasons for Granting the Writ

The decision below should be reviewed because it erroneously interprets the National Labor Relations Act and vitiates for all practical purposes the secondary boycott provisions of that statute. Moreover, as recognized by the Court itself, its decision in this regard is in direct conflict with a decision of the Circuit Court of Appeals for the Fifth Circuit in *N.L.R.B.* v. *Carpenters District Council of New Orleans and Vicinity, AFL-CIO* (No. 25408) 407 F. 2d 804 decided February 19, 1969. Petitioner contends that the interpretation of the Fifth Circuit in the cited decision which comports with well established principles of the National Labor Relations Board and of other courts of appeals is the correct one.

In *N.L.R.B.* v. *Denver Building Trades Council*, 341 U. S. 675, 692 (1951), this Court recognized the objective of Congress in enacting section 8(b) (4) (B), formerly Section 8(b) (4) (A) of the National Labor Relations Act as amended, 29 U.S.C., Sec. 158(b) (4) (B), hereinafter called the "Act" as follows:

> "In the views of the Board as applied to this case we find conformity with the dual Congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own."[3]

The decision of the Third Circuit which Petitioner seeks to have reviewed would permit pressures upon unoffending employers and others in controversies not their own

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[3] See also *National Woodwork Mfrs Ass'n* v. *N.L.R.B.*, 386 U. S. 612, 623-626, 632.

—provided those pressures did not have as their object a total and permanent cessation or cancellation of the business relationship between that employer and the employer with whom the Union did have a real dispute. The substance of the decision below is to be found in the following statement of the Court:

> "The record amply justifies the conclusion that these contractors were subjected to coercion in the form of threats or walkouts or both. The debatable issue is whether the object of this coercion was to force Burns to 'cease doing business' with White within the meaning of Section 8(b) (4) (B).
>
> "It was not the Board's theory, nor does it seem seriously to be contended that the respondent sought to compel Burns to stop using the services of White or to terminate its contract with White. Indeed, such action would not have been advantageous to the respondent. Rather, it is said that the respondent undertook to 'disrupt the business relation' between Burns and White so that the contractor would try to induce the subcontractor to comply with the respondent's demands. The question is whether the conduct so intended seeks to compel the one contractor to 'cease doing business' with the other within the meaning of section 8(b) (4) (B).
>
> "We considered a similar situation in N.L.R.B. v. Local 825, International Union of Operating Engineers, 3d. Cir. 1964, 326 F. 2d 218, 55 LRRM 2116, and concluded that the finding of a 'cease doing business' objective was not warranted. It is now urged that this case is distinguishable from that one because in the earlier case the work stoppages, though to the neutral employer's detriment, were

not attended by any communication of the union with that employer. However, the disruption of the neutral employer's business activity in connection with the primary employer and the objective of exerting pressure upon the primary employer through the neutral one was essentially the same there as here. Indeed, we quoted but did not approve the Board's finding:

'". . . Even, assuming, *arguendo,* that Respondent merely intended by its strike to force Selby and Elmhurst to require Nichols to change its method of operation, this in itself would have disrupted or seriously curtailed the existing business relationship between Nichols and these two other contractors, which would have been tantamount to causing the latter employers to cease doing business with Nichols".' 326 F. 2d at 220.

"Moreover, in neither case did the union admit a 'cease doing business' objective was, but rather in both cases the circumstances compelled the inference that the union wanted the contractor to use its influence with the subcontractor to change the *subcontractor's conduct, not to terminate their relationship.* (italics supplied).

"Accordingly, following our earlier decision, we hold that proof of coercive activity amounting to 'disruption of a business relationship' and aimed at causing a neutral employer to put pressure on the primary employer is insufficient, without more, to establish an effort to compel the one employer to 'cease doing business' with the other. The language of section 8(b) (4) (B) is apt to prohibit the classical secondary boycott where the attempt is made to coerce the primary employer by compelling oth-

> ers to stop trading or otherwise dealing with him. But we think the 'cease doing business' language is not apt to cover the objective proved here, however, objectionable or deserving of condemnation it may be. But cf. N.L.R.B. v. Carpenters District Council of New Orleans and Vicinity, AFL-CIO, 5th Cir., No. 25408, decided February 19, 1969, 70 LRRM 2726. We think it is for Congress to broaden the language of section 8(b) (4) (B) if it desires to cover such situations as this."

In short, therefore, the Third Circuit interprets the Act as requiring proof that the labor organization asserting economic pressure upon a neutral employer must have as its objective no less than a total and permanent severance of the business relationship between that employer and the employer with whom it has a primary dispute. The National Labor Relations Board, the agency charged by Congress with a mandate to interpret and enforce the provisions of the Act and whose expertise in such interpretation has been recognized by this and other Federal Courts in 22 years under Taft-Hartley, has never so literally construed the language of Section 8(b) (4) (B). Rather, it has long taken the view that coercive activity against an employer that has as an object a disruption or serious curtailment of the business relationship between that employer and another violates the secondary boycott provisions of the Act. The Act, in the view of the Board, does not require that the Union have as its objective a permanent and total rupture of the business relationship as held by the court below.

For example, in *Electrical Workers Union (New York Telephone Company)*, 140 NLRB 729, 730 (1963), the Board stated:

"Even assuming *arguendo* that respondent did not consciously contemplate imposition of this sanction. it is nonetheless clear that respondent sought by its threat to require that the company superimpose upon its existing agreement with Delee an added condition of performance that the work had to be done by Respondent's members. Acceptance of this condition by Delee would require the company to cease doing business with Delee on the basis of their original arrangement. The objective of causing such a disruption of an existing business relationship, even though something less than a total cancellation of the business connection, is a 'cease doing business' object within the meaning of section 8(b) (4) (B) of the Act."

The Board's finding in that case was sustained by the Court of Appeals for the Second Circuit, in *N.L.R.B.* v. *Electrical Workers, I.B.E.W.* (New York Telephone Co.) 325 F. 2d 561 (1963).

In *Longshoremen's Union* (*National Sugar Refining Co.*), 142 NLRB 257, the Board reached the same conclusion and its decision was subsequently enforced by the Third Circuit in *N.L.R.B.* v. *Longshoremen's Union* (National Sugar Refining Co.) 332 F. 2d 559 (1964).

Many other decisions of the Board and the Circuit Courts are to the same effect.[4]

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[4] For other decisions of the Board and the Courts to the same effect, see *International Brotherhood of Electrical Workers, AFL-CIO, et als. (Bendix Radio Division of the Bendix Corporation)*, 138 NLRB No. 993, *Local Union 825, International Union of Operating Engineers, (Nichols Electric Company)*, 138 NLRB 540

(Footnote continued on following page.)

For the purposes of this Petition it would appear sufficient to quote the very significant language of the Seventh Circuit on this issue. In *N.L.R.B.* v. *Milk Wagon Drivers Union (Pure Milk Association)*, 335 F. 2d 326, 328 (1964), that Circuit stated:

> "We think the Board was justified in deciding that the Union's conduct following their demands under their 'broadened interpretation' of Article 44 constituted unfair labor practices; and that the Union threatened to, and did, strike, because Wanzer could not, or would not, continue to have the eight displaced Union men drive the tank-trucks hauling the milk. The Board could also reasonably infer that to accede to the Union demands would be forcing Wanzer to disrupt, or cease, a business relationship with PMA; that the Union knew or should have known that this would be a necessary result of the demands; that accordingly the Union's con-

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(*Footnote continued from preceding page*)

enf. den. 326 F. 2d 218 (CA 3) *Local 1066, International Longshoremen's Association, (Wiggin Terminals)*, 137 NLRB 45, *New York Mailers Union No. 6, International Typographical Union, AFL-CIO (The Publishers Association of New York City)*, 136 NLRB 196, enf. 316 F. 2d 371 (C.A.D.C.) *Plumbers Union of Nassau County, Local 457, UA (Jerry Bady, d/b/a Bomat Plumbing and Heating)*, 131 NLRB 1243, enfd. 299 F. 2d 494, (C.A. 2); *Highway Truck Drivers and Helpers, Local 107 IBT (E. A. Gallagher & Sons)*, 131 NLRB 925, enfd. 302 F. 2d 897 (C. A. D. C.); *International Longshoremen's Association, AFL-CIO (Bd. of Harbor Commissioners)*, Wilmington, Del., 137 NLRB 1178 enf. as mod. 331, F. 2d 712 (C. A. 3), *Building and Construction Trades Council (Boston Gas Co.)*, 137 NLRB 1299; enf. in *Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 12*, 320 F. 2d 250 (C. A. 1).

duct was unlawful under Sec. 8(b) (4) (i) and (ii) (B); and that in striking to enforce Article 44, as interpreted by it, the Union was forcing Wanzer to condition whatever means were to be used to transport the milk on employment of Local 753 members, an unfair labor practice under Sec. 8 (b) (4) (i) and (ii) (A). District No. 9, Int'l Ass'n of Machinists v. N.L.R.B., 315 F. 2d 33, 51 LRRM 2496 (D. C. Cir. 1962). We are unable to say these inferences are clearly erroneous.

"Neither can we say that, on those findings, the Board could not reasonably conclude that one of the objects of the Union's conduct was to force a disruption of the business relationship among Wanzer, PMA and Quality. NLRB v. Denver Bldg. & Constr. Council, 341 U. S. 675, 688, 28 LRRM 2108 (1951). Less than a total cessation of an existing business relationship is within the meaning of 'cease doing business' in Sec. 8 (b) (4) (B). Local 3, Int'l Bhd. of Elec. Workers, 140 NLRB 729, 730, 52 LRRM 1118 (1963), enforced 325 F. 2d 561, 55 LRRM 2076 (2d Cir.).

"The inference is warranted that the Union, virtually, exerted pressure on Wanzer to break its contract with PMA that the milk be delivered f.o.b. Chicago unless Quality's drivers were members of Local 753. It follows that we must disagree with the Union's contention that it had not committed an unfair labor practice because it was not asking Wanzer to cease doing business with anybody, not asking Wanzer to buy milk from anybody but PMA at any time, but only asking Wanzer to live up to its agreement."

The most compelling reason for granting the writ petitioned for herein is that the decision below is in direct conflict with a decision of the Fifth Circuit issued on February 19, 1969 in *N.L.R.B.* v. *Carpenters District Council of New Orleans and Vicinity, supra,* at p. 806 in which that Circuit on the same issued stated:

> "Thus, this case presents a classic example of secondary coercion: The union brought a neutral employer into its conflict with a primary employer by inducing employees of the neutral to strike and by appealing directly to the neutral's officers. One of the Union's defenses is that secondary pressure is not prohibited by the statute unless an object thereof is to force the neutral to cease doing business with the primary employer. The union argues that it never suggested to Southern that it should cease doing business with Delta and had no desire for this to happen; it simply wanted Southern to influence Delta to rehire carpenters. Concededly, the subcontracting agreement between Southern and Delta did not require Delta to use carpenters, but respondent nevertheless argues that it was merely pressuring Southern to use its influence with Delta and that it would not have benefitted in the least from a severance of relations between the two companies. While the statute [8 (b) (4) (B)] by its literal terms does require that an object of illegal secondary pressure be to force a neutral to cease doing business with a primary employer, the Board has said, and we agree, that the objective of causing a serious disruption of an existing business relationship, even though something less than a total cancellation of the business connection, is within the intendment of the statute. Electrical Workers

Union, Local 3, 1963, 140 NLRB 729, 52 LRRM 1118, enf'd, 2d Cir. 1963, 325 F. 2d 561, 55 LRRM 2076; Longshoremen's Union, Local 1066, 1962, 137 NLRB 45, 50 LRRM 1056; International Typographical Union, 1962, 136 NLRB 196, 49 LRRM 1736, enf'd, D. C. Cir. 1963, 316 F. 2d 371, 52 LRRM 2433. In this case, the union's objective was to force Southern to add a condition to its existing subcontracting agreement with Delta, namely, that Delta use only carpenters. Stated another way, the union's objective was to force Southern to cease doing business with Delta under the existing contractual arrangement, which did not require Delta to use carpenters on the work. Secondary coercion to force a neutral to add a condition of this kind to its existing contractual arrangement with the primary employer is an illegal objective within the meaning of the statute. The necessary elements for a violation of 8 (b) (4) (i) and (ii) (B) were established."

As the above quoted language of the Fifth Circuit inferentially recognizes, in many, if not most secondary boycott situations, the offending Union's preferred objective is not to force a literal and total cessation of business relations, but merely to so alter the conditions under which the business relationship was first entered into that the Union's demands are met. Perforce the Congressional objective of shielding unoffending employers from pressures in controversies not their own as recognized by this Court in *N.L.R.B.* v. *Denver Building Trades Council, supra,* cannot be achieved under the Third Circuit construction of the statute.

Finally, Petitioner urges that review should be granted because the decision of the Third Circuit imposes upon

the charging party and the General Counsel of the Board a burden of proof which is virtually impossible to sustain. In its decision, the Third Circuit noted that the Union did not "admit" a cease doing business object (Appendix C p. 51a). Obviously, absent such an admission, under the criteria established by this decision a cease doing business object would be virtually impossible to establish and thus a violation of the statute highly improbable. It is submitted the protection afforded by section 8 (b) (4) (i) (ii) (B) was never intended to be so illusory.

Thus, the question presented by this case is one of great and recurring significance in the enforcement of the National Labor Relations Act. Its ramifications in all industries and particularly in the construction industry are far reaching and it establishes a precedent which, if permitted to stand, will reshape labor relations as heretofore understood and have a substantial adverse impact upon interstate commerce.

CONCLUSIONS

For the reasons set forth above, it is respectfully submitted that this Petition for a writ of certiorari should be granted.

Respectfully submitted,

APRUZZESE & MCDERMOTT
Attorneys for Petitioners
By: VINCENT J. APRUZZESE
A Partner

APPENDIX A

Trial Examiner's Decision

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
Division of Trial Examiners
Washington, D. C.

Case No. 4-CC-359

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,

and

BURNS & ROE, INC.

Case No. 4-CD-144

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,

and

WHITE CONSTRUCTION COMPANY.

LEO F. HANNON, ESQ., and BURTON B. SUBRIN, ESQ., of Philadelphia, Pa., for the General Counsel.

VINCENT J. APRUZZESE, ESQ. of Newark, N. J., for the Charging Parties.

Appendix A

EARL S. ARONSON, ESQ., for THOMAS E. DURKIN, ESQ., of Newark, N. J., for the Respondent.

Before:

JOHN F. FUNKE,
Trial Examiner.

Statement of the Case

A charge having been filed by Burns & Roe, Inc., herein Burns, on October 8, 1965, against Local No. 825, International Union of Operating Engineers, AFL-CIO, herein Local 825 or the Respondent, alleging Respondent violation Section 8(b)(4)(i) and (ii)(B) of the Act and a charge have been filed by White Construction Company, herein White, on November 5, 1965, against Respondent alleging it violated Section 8(b)(4)(i) and (ii)(D) of the Act, the General Counsel issued a consolidated complaint against Respondent alleging violation of said Section.

The answer of Respondent denied the commission of any unfair labor practices.

This proceeding with all parties represented was heard before me on January 6 and 7, March 31, April 1 and May 16, 1966, at Philadelphia, Pennsylvania.[1] At the con-

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[1] The hearing was originally scheduled for December 7, 1965. At the request of counsel for the Respondent the hearing was rescheduled by the Regional Director for Region Four on January 6. On that date the Examiner recessed the hearing until January 7, 1966, at request of counsel for Respondent made through the General Counsel. On January 7, no representative of the Respondent appeared and the hearing was opened, testimony taken and the hearing closed. On January 25, counsel

(*Footnote continued on following page*)

clusion of the hearing the parties were granted leave to file briefs and briefs were received from the General Counsel.[2]

Upon the entire record and from my observation of the witness, including their demeanor while testifying, I make the following:

Findings and Conclusions

I. The business of the Companies involved

Burns is a New Jersey corporation engaged as engineering constructor for Jersey Central Power & Light Co., at a nuclear power plant at Oyster Creek, New Jersey.

(*Footnote continued from preceding page*)

for Respondent, Thomas E. Durkin, Jr., moved to reopen the hearing and, the General Counsel not opposing the motion, the motion was granted by the Trial Examiner by order of February 8, and the date of the reopened hearing was fixed for February 24. The order limited the reopened hearing to cross-examination of the General Counsel's witnesses and to the testimony of Respondent's witnesses and Respondent's documentary evidence. By agreement of the parties the reopened hearing was again postponed to March 21 and, at request of the counsel for the Charging Parties it was again postponed until March 31. At the conclusion of the hearing on April 1, two witnesses under subpena by Respondent failed to appear (one due to illness) so the hearing was recessed indefinitely. The hearing was reopened on May 16, by agreement of the parties and concluded on that date.

[2] A brief was received from the General Counsel on January 25, following the close of the hearing on January 7. At the conclusion of the reopened hearing the General Counsel was given leave to file a supplemental brief and counsel for the Respondent leave to file a brief. A supplemental brief was received from the General Counsel July 1.

Appendix A

During the course of the construction of the Oyster Creek plant Burns purchased materials valued in excess of $50,000 annually from points outside the State of New Jersey.

White is a New York corporation engaged as a subcontractor for Burns at Oyster Creek in the construction of a reactor plant at the site. During the course of construction of this plant White has purchased materials valued in excess of $50,000 annually from points outside the State of New Jersey.

At all times material herein Porier & McLane Corporation, herein, Porier, and Chicago Bridge & Iron Co., herein Chicago Bridge, have been engaged as subcontractors for Burns at Oyster Creek.

Burns, White, Porier and Chicago Bridge are engaged in commerce within the meaning of the Act.

II. The labor organizations involved

Respondent and Local Union No. 350, International Association of Bridge, Structural & Ornamental Ironworkers, herein the Ironworkers, are labor organizations within the meaning of the Act.

III. The unfair labor practices

A. *The facts*

1. Background

In September 1964, Burns started construction of a multimillion dollar nuclear power generator plant at Oyster Creek, New Jersey, for Jersey Central Power and Light Company. Burns was the architect engineer and general contractor but employed no construction workers.

Appendix A

Construction was subcontracted to White (construction of the reactor building), to Chicago Bridge (construction of compression chambers, containment vessel and suppression chambers for the reactor) and to Porier (construction of the turbine structure, intake and discharge structures).[3] All the operating engineers on the job were represented by Local 825. Neither Burns nor White had a contract with Local 825, Chicago Bridge and Porier did. Burns had a contract with the International Union of Operating Engineers, and both Burns and White were members of the Building Contractors Association of New Jersey which had had contracts with Local 825 prior to 1963. On January 9, 1964, the National Labor Relations Board in *Local 825, Operating Engineers,* 145 NLRB 952, found Respondent in violation of Section 8(b)(1) and (3) of the Act for attempting to bargain unilaterally with the individual members of the Association.[4]

2. The work stoppage on October 1

Robert C. Kylberg, general superintendent for White until the middle of January 1966, testified that discussion as to the assignment of an electric welding machine to be used at Oyster Creek by White started in August 1965, before White commenced operations at the site. These discussions were conducted with the contractors association (presumably the Building Contractors Association) and it was decided to give the assignment to the Iron-

[3] There were other subcontractors who were not involved in the dispute.

[4] The Board issued a supplemental decision in this case on February 2, 1966, which did not relate to or affect the Board's 8(b)(1) and (3) findings.

workers. Kylberg testified that this decision was arrived at by "consensus."

Robert A. Escher, president of White, testified that early in September (White started on the job on September 1, 1965), he had a meeting with representatives of the various crafts to discuss the job in general and among those present were Peter Weber, president of Local 825, and T. J. Norton, business agent for the Ironworkers. There was, according to Escher, no discussion of the operation of the electric welding machine which did not arrive at the jobsite until on or about September 20.

Chris Gunderson, construction superintendent for White at Oyster Creek, testified that when White installed the electric welding machine at the jobsite in September he was approached by Bill Bonatz, job steward for Local 825, and Hank Behrend, lead engineer for Porier, and was told he needed an engineer to push the buttons which started and stopped the machine.[5] Gunderson called his

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[5] Respondent concedes that Bonatz was an agent of Local 825. It does not concede that two lead engineers, Behrend for Porier and Illario for Chicago Bridge, were agents. A lead engineer, also called a master mechanic, is provided by and designated by Local 825 when five or more engineers are employed by a contractor at a jobsite. The duties of a lead engineer are defined in Local 825's contract (General Counsel's Exhibit No. 10) Article II, section as follows:

> He shall be responsible for the performance of all duties of Engineers, Apprentice Engineers, Repair Mechanics, Oilers, Firemen, Maintenance Engineers, and other employees under his jurisdiction under the direction of the Employer.

(*Footnote continued on following page*)

office and was told that the work had had been assigned to the Ironworkers. When or where Gunderson reported this to Bonatz and Behrend is not disclosed but on September 30 Gunderson was again approached by them and told they were "to knock the men off the crane" (White at this time had one crane operating with an engineer and an oiler) and gave him three copies of an agreement with Local 825 for White to sign.[6] According to Gunderson his engineer and oiler stopped work at 10 a.m. on September 30 and did not return to work until about 1 p.m. on October 1.[7]

Giles Willis, resident construction manager for Burns at Oyster Creek, testified that on September [illegible] 1965, he

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(*Footnote continued from preceding page*)

He will not be allowed to operate an Engine, only in the temporary absence of the regular engine. He shall have complete supervision over all repairs made on all machines and other automotive equipment used, when such repairs are done on the job.

The testimony in this case, however, establishes that Behrend and Illario participated with Bonatz in submitting demands upon the contractors, that they warned the contractors when stoppages were to occur and told the contractors what the causes of dispute were. It was Behrend and not Bonatz who call the Newark office of Local 825 when the first walkout occurred. Having joined with the job steward and having displayed authority equal to his when disputes and stoppages arose I think it clear that they acted as agents of Local 825 and there is no evidence that Local 825 ever repudiated this authority.

[6] General Counsel's Exhibit No. 10.

[7] Whether or not White's engineers quit on September 30 the engineers employed by Chicago Bridge and Porier worked that day.

met in his office at the jobsite with Bill Bonatz and Hank Behrend who told him that members of Local 825 employed by subcontractors at the jobsite had taken a vote to cease work unless Burns signed a contract with Local 825. On the next day Bonatz, Behrend and Bobbie Illario saw Willis, and Illario give him three copies of a standard Local 825 contract[8] and told him that unless Burns signed them all the members of Local 825 employed at Oyster Creek would walk off.[9] The following day, October 1, at 8 a.m. Bonatz, Behrend and Illario again met Willis and asked if Burns had signed that contract and when Willis replied in the negative they left his office. Willis saw them proceed to the parking lot outside the gate where the engineers were gathered and after what appeared to be some discussion the engineers left.

R. T. Daricek, superintendent for Chicago Bridge, testified that on September 30 he met Bonatz and asked him if the rumors were true that the engineers would not work the following day and was told by Bonatz that if Burns did not sign a contract with Local 825 the following morning no engineers would work. When Daricek protested that Chicago Bridge was under contract with Local 825 Bonatz told him that all the contractors must have contracts.

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[8] General Counsel's Exhibit No. 4. This exhibit is the same as General Counsel's Exhibit No. 10 which was submitted to White for signature. Both are copies of Local 825's A.G.C. contract.

[9] Although this remark is denied by Illario, I found Willis to be a completely credible witness and I accept his testimony on this point.

Behrend and Bonatz testified that this stoppage took place after the members of Local 825 employed on the job (approximately 35) held a meeting in the Porier shanty on September 28 and expressed disagreement with the policies of Burns and White. Their disagreement with Burns was directed to the failure of Burns to enter into a contract with Local 825 and with White to its failure to contract with Local 825 and with its assignment of work on the welding machine to the Ironworkers. It was the testimony of both witnesses that this was a spontaneous reaction on the part of the members and was not directed nor instigated by any official of Local 825. The members did not go to work on the morning of October 1.

Behrend testified that when the men failed to go to work he called the office of Local 825, spoke to a clerk and informed him of the work stoppage. Subsequently he received a call from Peter Weber, business manager of Local 825, to get the men back on the job "right away." Behrend complied with instructions, made several telephone calls, contacted Bonatz in a restaurant and the work was resumed. There is no evidence, apart from Behrend's testimony that Weber told him the matter had been settled, as to why Weber told him to get the men back to work. (Weber did not testify at the hearing.)

3. The stoppage on October 7

Gunderson testified that on October 6 he still had one engineer and an oiler working for him and that on October 7 neither "showed up." Gunderson called Local 825 at Newark and asked for replacement for the next day. The next day an engineer and oiler appeared at the site, told him they were going to check with the other en-

gineers before going to work and he "didn't see them since." On October 12 the engineers employed by White returned to work. There is no explanation in the testimony of either Gunderson, Kylberg nor Escher, as to the reason for the stoppage nor for the return.

Willis, however, testified that at about 4 p.m. on October 6 Bonatz and Illario came to his office and told him that unless an operating engineer was assigned to the welding machine there would be no engineers at work the following day and Illario again brought up the failure of Burns and White to sign contracts with Local 825. On that day Burns submitted the dispute over the work assignment to the National Joint Board for the Settlement of Jurisdictional Disputes. (General Counsel's Exhibit Nos. 5 and 6.) Willis told them there would be no change in the assignment unless it was by the Joint Board.

Telghman Suffrecal, general superintendent for Porier, testified that he had 20 operating engineers working on October 6 and that Behrend, shop steward for his engineers,[10] told him he might or might not have engineers the next day. On October 11 Suffrecal again saw Behrend who told him the engineers would return on the 12th. He admitted that Local 825 had no dispute with Porier but that it did have a dispute with Burns and with White.[11]

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[10] Suffrecal was apparently confused since the record is clear that Bonatz was shop steward for all engineers employed at Oyster Creek and that Behrend was lead engineer for Porier. Suffrecal subsequently corrected this testimony.

[11] This statement was denied by Behrend and was the subject of lengthy cross-examination when Suffrecal was recalled on March 31, 1966. Despite Suffrecal's evasive and confusing testimony on the latter date I credit this statement chiefly because the record is barren of any conflict between Porier and Local 825 and the statement was one which would quite likely have been made. Suffrecal was clear and convincing on direct and I credit his testimony on direct.

Behrend gave him no other reason for the stoppage. Porier's engineers worked continuously thereafter.

Langlinais, project manager for Chicago Bridge, testified that his engineers did not work on October 7 and that on October 8 he had a conversation with Bonatz in which Bonatz told him that the stoppage was the direct result of the welding machine assignment and the fact that Burns and White did not have a contract with Local 825. The engineers returned on October 12 and worked thereafter. There was no dispute between Chicago Bridge and Local 825.

The only testimony by any representative of Local 825 relating to this stoppage is that of Bonatz. He testified as follows:

> Q. Correct. Now on or about October 6, 1965, did you say to anyone that unless an operating engineer was assigned to the welding machine there would be no operating engineers on the job the following day? A. Not that I can remember.
>
> Q. There was a work stoppage, was there not, sir, on or about October 7? A. I believe so, yes.
>
> Q. How did this work stoppage come about, do you know? A. I believe they started the welding machine.
>
> Q. Now after the welding machines were started, what happened? A. The men walked off.
>
> Q. Did you tell the men to walk off? A. No, sir.
>
> Q. Well, when the men walked off was there a meeting? A. No, I think the meeting was prior to that.

Q. When, sir? A. A week maybe.

Q. This would be the meeting you discussed back on or about October 1 or on or about September 29? A. I believe so.

Bonatz' statement that he believed the men walked off on this date because White started operating the welding machine may have been made in confusion as to dates. There is no evidence that the machine was started on October 7 and subsequent testimony indicates that the machine was first operated by an ironworker on November 4. (It may have been operated by engineers for 2 days prior to that date.)

4. The work stoppage on November 4

On October 20 the Joint Board notified the parties to the dispute over the welding machine that there was no reason to disturb the assignment of work on the welding machine to the Ironworkers. (General Counsel's Exhibit No. 7.) On October 26 a meeting was held at the jobsite to discuss the award. Kylberg met with Weber, Behrend, Bonatz and Gatti[12] and went to lunch with Weber and Gatti. Weber told Kylberg that the Joint Board award was all wrong and that the assignment of the welding machine meant a great deal to him. He told Kylberg that if he would work with Local 825 it would be advantageous and that if not there would be complications. According to Kylberg he pointed to a crane a few feet away, asked him how he would like to have three men on the crane instead of two. He also asked him how he

[12] Gatti was a member of Local 825.

would like to have a 30-hour week with triple overtime.[13] President Escher of White was at that time on a business trip and it was agreed to withhold final decision until his return. There is nothing in the record to indicate that Escher had any conversation with Weber after his return until December 1.

Gunderson testified that on November 4 he started the welding machine and that his crane operators walked off and surrounded the machine and it was not operated that day.[14] At this time Bonatz came to him and asked if he had signed a contract with Local 825. At this time the witness' testimony was interrupted and he did not give the remainder of the conversation. Gunderson stated that on the next day he again started the machine and it was again surrounded by his engineers and was not operated. On November 8 a temporary injunction was granted by the District Court (General Counsel's Exhibit No. 11) restraining Respondent from striking, etc., to compel White to assign the work of starting and stopping electric welding equipment at Oyster Creek to employees represented by Respondent rather than to members of any other labor organization. Gunderson could not remember when the men resumed work.

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[13] On cross-examination counsel for Respondent attempted to draw a distinction between the use of the words "would" and "could" in this conversation. The distinction, to the extent it exists, is that between a direct and implied threat, a distinction not relevant in Section 8(b)(4).

[14] At this time, according to Gunderson, he employed four engineers, Cherry, Bonatz and Gatti and one whose name he could not recall. These were the men who surrounded the machine.

Bonatz testified that he was working on the crane on November 4 and that when the welding machine started he joined "some of the fellows around the machine." He admitted the machine had been shut off but did not know who did it. He stayed at the welding machine only a few minutes but did not return to his crane. While he testified that the crane was not working he admitted that he did not believe there was anything wrong with it. He did not work November 4 or 5 but again there is no evidence to show when or why he returned.

5. The concrete pump

On November 1 White brought an electric pump to the jobsite to be used for pouring concrete. Gunderson set the pump on November 15 and Bonatz told him he would need an engineer to operate it. Gunderson agreed and told Bonatz to send one out the next day as he wanted to pour on the 17th. On the 16th Illario came out with two additional engineers to act as standbys on the pipe running from the pump and announced that since there were now five engineers on the job he was lead engineer. Gunderson refused to employ the engineers on the ground they were not needed. The next day, the 17th, the same dispute continued and no engineer operated the concrete pump. On that day Ed Smith, Ironworker foreman, told Gunderson the wires on the electric welding machine had been cut and oil poured into the armature. There is no evidence to establish who sabotaged the welding machine. At about noon the other engineers employed by White walked off the job.

Appendix A

Gunderson testified that on either the 16th or 17th[15] he spoke with Illario and that Illario "mentioned the fact that this was more or less because of the electric welding machine being in operation." Since the only dispute at this time was over the number of engineers to be employed and since Illario, who was bringing out the additional engineers, was the only person directly involved in the dispute there can be no doubt that Illario was referring to the pump dispute and attributing it to the welding machine dispute where an injunction prevented a stoppage.

Robert Escher, president of White, testified that he called Weber at his home on December 1, to find out how to get the men back to work. He told Weber in the course of a conversation which lasted over an hour that he had heard that if he took the electric equipment (the welding machine) off the job and put in gasoline equipment that White could go back to work. According to Escher, Weber answered, "Yes, but you have got to sign a contract." Escher told him he could not sign a contract because there had been a dispute between them ever since 1962 over this. (This refers to the efforts on the part of Local 825 to have members of the Building Contractors Association sign individual contracts.)[16] When Escher

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[15] While Gunderson testified that it was either on the 16th or 17th and it is a fact that Gunderson and Illario talked on both days the nature of the remark indicates it was probably on the 17th.

[16] When Escher inquired why Local 825 was supplying engineers on three other White projects in New Jersey, Weber told him he would pull them off the next day. These engineers were never pulled off the White jobs.

tried to discuss the award of the Joint Board Weber told him they (the Joint Board) "didn't know what the hell they were talking about, that this was his work and had been his work historically and that they were just a bunch of dopes and he wasn't going to abide by it and that it meant four hundred new jobs in the State of New Jersey." Weber denied that Norton, president of the International Union of Operating Engineers, had ordered him to put the men back to work, and added that he "didn't have to." Again Weber mentioned such demands as 30-hour week, triple overtime, and four men on a crane.

The engineers who walked off on November 17 returned to work on either December 21 or 22. Again there is no explanation given in the record as to the reason for this return.

B. *Conclusions*

1. Credibility

Credibility is an issue in the case and I have already made certain specific findings which need not be repeated here. It must be noted, however, that two of the General Counsel's witnesses, Suffrecal of Porier and Gunderson of White, who testified forthrightly and without reservation on January 7, were recalled on cross-examination on March 31. On this occasion, confronted for the first time by a representative of the Respondent, their testimony became both evasive and confusing. It was apparent from their conduct on the stand and the hesitancy with which they answered that they were reluctant to testify adversely to the interests of the Respondent, generally regarded as one of the most powerful local labor organizations in the East. I conclude that their testimony

given on January 7 when they were free from any pressures, however imaginary in nature, was truthful. I also base this finding on the fact that this testimony corroborates and fits the pattern of the testimony of other witnesses for the Charging Party whom I have credited in full and who did not weaken under cross. Apart from these two, the General Counsel's witnesses were forthright and credible on both direct and cross-examination.

I might also note that much of the testimony of the witnesses called by Respondent was confusing if not evasive and that no specific finding can be made on much of it.

Where I have credited the testimony of a witness as to a specific conversation I have, *a fortiori*, discredited testimony of other witnesses which was contradictory whether or not such a specific finding has been made.

2. Violations of Section 8(b)(4)(B)

The complaint, paragraphs 7(a) and (b), alleges that the conduct of Respondent as above set forth, *supra*, had among it objects the forcing of Chicago Bridge, Porier and White to cease doing business with White. There is not a scintilla of evidence to support these allegations. On this record Respondent may be found to have two objectives, (1) to force Burns and White to agree to Local 825's contract in violation of the Board's Order in the *Building Contractors'* case, *supra*, and (2) to force White to assign the operation of the welding machine to its members. Neither objective would have been furthered by a general cessation of business among the parties. Local 825 never made any request upon Chicago Bridge, Porier or White to cease doing business with Burns. Such a request would have been totally irrational for it would have

simply forced Burns to employ other subcontractors which, with the possible exception of White, would not have furthered either interest of the Respondent. But Respondent never indicated it wanted White off the job—it wanted to harass White to gain compliance with its requests. Nor was any demand made upon Burns to cease doing business with White. Respondent never suggested that cancellation of the contract would have served its purpose. It did inform Burns, through persons I have found to be its agents, that the failure of Burns and White to sign contracts and the assignment of the work on the job were the sources of the dispute. All Respondent wanted was the work, not a substitution of contractors nor a termination of contractual relationships between the contractors.

The General Counsel attempts to distinguish this case from *Local 825, International Union of Operating Engineers, AFL-CIO (Nichols Electric),* 138 NLRB 540, enfd. denied, 326 F. 2d 218 (C. A. 3), by stating "there is ample evidence to show Respondent sought these objectives." The brief, which is characterized elsewhere by specificity, give no citation of fact or testimony to support this conclusion and a search of the record reveals no testimony to support it.[17] Neither the General Counsel or any other counsel should so mislead a Trial Examiner. In this case it was necessary for the Trial Examiner to waste his time in a painstaking recheck of the record in search of this alleged "ample evidence." Attorneys for the General

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[17] The Board has, however, specifically supported misleading briefs on the part of the General Counsel and has reprimanded a Trial Examiner for calling attention to one in *S. Klein's Department Stores, Inc.*, 149 NLRB 466.

Counsel should regard themselves as bound by the Canon of Ethics of the American Bar Association and it is lamentable that the admonition of a distinguished attorney to his junior associates that they would meet no more unscrupulous adversary in court than counsel for the Government should ever find support.[18]

3. Violations of Section 8(b)(4)(D)

The Respondent has failed to file a brief in this case so its contentions and defenses are subject to speculation on the part of the Trial Examiner. Based solely on the lines of interrogation taken by counsel for the Respondent upon examination of its witnesses and cross-examination of the General Counsel's witnesses I find those defenses to be.

(1) That the work stoppages, at least those of October 1 and 7, were neither authorized nor directed by the Respondent but were spontaneous on the part of the employed members themselves in resentment of the fact that there were no contracts between White and Burns and that operation of the welding machine had been assigned to the Ironworkers.

(2) That the award of the work on the welding machine to the Ironworkers was invalid in that the dispute was submitted to the Board by Burns and not by White and that Burns was not a party to the dispute.

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[18] Apart from this the case was ably tried and ably briefed by counsel for the General Counsel and as to this specific criticism it must be remembered that counsel operate under direction.

(3) That the work traditionally and historically had been performed by Operating Engineers and not by the Ironworkers.

(4) That the Ironworkers had made no claim to the work.

This proceeding does not follow a Section 10(k) hearing but is brought pursuant to the "Alternative Procedure" as set forth in the Board's Rules and Regulations, Series 8, as amended, Section 102.93. This section reads:

> Sec. 102.93 Alternative procedure.—If, either before or after service of the notice of hearing, the parties submit to the regional director satisfactory evidence that they have adjusted the dispute, the regional director shall dismiss the charge and shall withdraw the notice of hearing if notice has issued. If, either before or after issuance of notice of hearing, the parties submit to the regional director satisfactory evidence that they have agreed upon methods for the voluntary adjustment of the dispute, the regional director shall defer action upon the charge and shall withdraw the notice of hearing if notice has issued. If it appears to the regional director that the dispute has not been adjusted in accordance with such agreed-upon methods and that an unfair labor practice within the meaning of section 8(b)(4)(D) of the act is occurring or has occurred, he may issue a complaint under section 102.15, and the procedure prescribed in sections 102.9 to 102.51, inclusive, shall insofar as applicable, govern; and sections 102.90 to 102.92, inclusive, are inapplicable.

Appendix A

It has been found that on October 6, 1965, Burns submitted the dispute respecting work on the welding machine to the Joint Board and that on October 19 the Board decided not to disturb the assignment of this work to the Ironworkers. On October 20 it so notified the parties. Burns, White[19] and Local 825 were both bound by Joint Board rulings.

At the hearing the Trial Examiner made certain rulings which are hereby affirmed. He stated that he would not examine the procedures before the Joint Board or determine whether or not Burns was entitled to submit the dispute to that Board. Since all parties appeared the Examiner felt that this issue could not be raised in the instant proceeding. Neither would the Examiner permit the merits of the assignment to be attacked in this proceeding. Whether the work had been traditionally performed by Operating Enginers was not an issue before

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[19] The contract between Burn and White contained the following clause:

Article 31 Labor Relations

> The subcontractor shall be responsible for its own labor relations with any trade or Union representing his employees and he shall negotiate and seek to adjust all disputes between himself and his employees or anyone representing such employees. The same responsibility shall extend to the Lower Tier subcontractors. All contractors in lower Tier subcontractors shall in the settlement of any jurisdictional dispute be bound by the Rules and Procedures of the National Joint Board where the settlement of jurisdictional disputes and shall make assignments in accordance with such Rules and Procedures.

Escher testified that White had in the past submitted jurisdictional disputes to the Joint Board.

the Trial Examiner since this was not a 10(k) proceeding. These rulings would eliminate defenses (2) and (3), *supra.*

The fact that the Ironworkers had made no claim to work is equally irrelevant. As the court said in *Carpenters et al.* v. *C. J. Montag & Sons,* 335 F. 2d 216, 221 (C.A. 9):

> The fact that one union has the jobs and holds on to them in a polite, non-belligerent manner while the other union uses forbidden tactics to in an effort to get them, or some of them, does not mean that what Congress regarded as the evils of a jurisdictional dispute are not present.

The crux of this case lies in the contention that the work stoppages were not authorized by Local 825. As to the work stoppage of October 1, I would find that the General Counsel has not sustained his burden of proof to show that this stoppage was authorized or directed by Local 825 or its agents.

There is nothing in the record to indicate that either Bonatz, Behrend, or Illario were not conveying to Willis the feeling of the men when they advised him that there would be a stoppage on October 1 if Burns did not sign a contract. Whether this feeling had been generated among the men by the agents of Local 825 is open to question but there is insufficient evidence to support such an inference. Among the major difficulties in resolving issues in labor-management relations disputes is the fact that most decisions, both by labor and management, are made *in camera* and full disclosure of the motives of decisions so reached is seldom, if ever given. If the mo-

tive is unlawful the more realistic term is never. If simple truthfulness and honesty were ever to prevail the decisional-making process would be an easy one, but truthfulness and honesty are not commonly found when a party is charged with violations of the Act. If people were honest there would be telephones at racetracks. A fact not disputed which supports the conclusion reached is that Behrend reported the walkoff to Newark on the morning of October 1 and that shortly thereafter he was ordered by Weber to get the men back to work. I do not view this walkout without suspicion but resort must be taken to the familiar cliche that suspicion is not proof.[20]

A different conclusion must be reached as to the walkout on October 7. I have credited the testimony of Willis that late in the afternoon of October 6 he was approached by Bonatz and Illario and told that unless an engineer was assigned to the welding machine the men would not work. Suffrecal of Porier was told by his lead engineer, Behrend, on October 6 that he might or might not have men working the next day. Langlinais of Chicago Bridge was told by Bonatz on October 8 that the stoppage was the direct result of the failure of White to assign the welding machine to the members of Local 825. Unlike the work stoppage of October 1 none of Local 825's agents testified that the stoppage was the result of a vote of the members.[21] Since this is that kind of case in which the

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[20] As the court stated in *N.L.R.B.* v. *Local 217, Plumbers, etc. (The Carvel Company)*, 62 LRRM 2257, decided May 26, 1966 (C.A. 1), there is no violation unless the employees are induced and a totally self-generated cessation of work would not be proscribed.

[21] While Behrend testified that he did not tell the men to walk off on October 6 and that he believed the walkout was the result of the vote taken a week earlier his testimony is far from conclusive.

issues must, for the most part, be decided on rather tenuous inferences I find, in view of the warnings given by union representatives, that the walkout was authorized.[22] It is true that these same representatives gave the same warnings of a prospective walkout on October 1 but those warnings were accompanied by statements that the members were making the decision. The warnings which related to the walkout of October 6 did not attribute the decision to the men. It does not seem likely that members of a well disciplined union (and this characterization is based on a review of Board decisions involving Local 825 and this Examiner's recollection of testimony in four cases which he heard in which Local 825 was the Respondent) would again strike on their own initiative after having been ordered back to work on October 1, an order with which they immediately complied.

The motive for the walkout on November 4 is manifest. We have a history of the dispute between Local 825 and the two Charging Parties by that date going back to the time the machine was first installed at Oyster Creek. More importantly we had the jobsite meeting with Weber on October 26 in which Weber told Kylberg that the Joint Board's assignment was all wrong and that the assignment of the welding machine operation meant a great deal to him, a statement which was accompanied by thinly veiled threats to impose burdensome conditions on White. When the machine was first operated by an ironworker on November 4, White's four engineers promptly ceased work and surrounded the machine. At or about the time

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[22] The inference relates only to the authorization of the walkout. The purpose of the walkout was clearly stated by Local 825's agents.

the engineers ceased work Bonatz went to Gunderson and asked him if White had signed the contract with Local 825.[23] Gunderson told him, "I did not have."

The men did not return to work until after the District Court injunction issued on November 8. Nothing could be clearer than that this walkout was proscribed by Section 8(b)(4)(D) of the Act and that the methods employed were in violation of Section 8(b)(4)(i) and (ii)(D).

Such doubt as might exist that the walkout on November 17, when the concrete pump was to start operating, and the demand for additional engineers to operate the pump is resolved by the credited testimony of Gunderson and Escher. Gunderson testified that while he was disputing the number of engineers required to operate the pump with Illario (Gunderson thought one sufficient while Illario was demanding three). Illario stated that the requirement was more or less due to the electric welding machine dispute. Escher, anxious to get the men back to work, called Weber on December 1 and in the course of a lengthy conversation was told that if he replaced the electric machine with a gasoline welding machine (equipment which would be operated by engineers) and signed a contract, the men would go back. While it may have been no more than a coincidence that the wires on the welding machine were cut and oil poured into its

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[23] This contract, submitted to both Burns and to White (General Counsel's Exhibits Nos. 4 and 10) contains an addendum which includes in the job classifications the work on both gas and electric welding machines as part of the equipment to be operated by members of Local 825. A signing of the contract would therefore accomplish both objectives sought by Respondent—contractual status and the right to operate the machine.

armature on that same day, this coincidence does nothing to diminish the General Counsel's case.

In reaching the conclusion that Respondent violated Section 8(b)(4)(i) and (ii)(D) in these three specific work stoppages as above found I have considered the fact that neither Burns nor White had any difficulties with Local 825 until after the welding machine was brought to the jobsite about September 20. White, without a contract, was able to obtain engineers from Local 825 and there was no hint until after September 20 that the failure to contract would occasion trouble on the job. During this entire period White was engaged on three other projects in New Jersey which were not shut down, another indication that the Oyster Creek problem stemmed from the welding machine.

While the Board (Member Leedom dissenting) has held that the mere giving of notice of prospective strike action against a subcontractor to the prime contractor is not a violation of Section 8(b)(4)(ii)(B), *Local Union No. 83, Teamsters, etc (Marshall & Haas)*, 133 NLRB 1144. I find that case clearly distinguishable from the instant case. In *Marshall & Haas* the prime contractor was not a party to the dispute with the subcontractor and the notice was given to show that the possibility of a stoppage might occur on the job and, presumably, to offer it the chance to settle the dispute. Here Burns was a primary party to the dispute and the threats made to White and the work stoppages were directed to the failure on the part of Burns as well as White to sign a contract. Under such circumstances I find that the threats and coercion directed to White were directed equally to Burns. It was only the fortuitous circumstance that Burns employed no engineers at the jobsite that precluded it from suffer-

ing stoppages. I shall therefore include Burns in the Recommended Order.

IV. The remedy

Having found the Respondent engaged in certain unfair labor practices I shall recommend that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act.

The General Counsel has requested that a Board Order issue in this case in view of prior violations of the Act by Respondent and its failure to comply with Board Orders.[24] I agree and shall recommend an order in the form requested by the General Counsel.[25]

Upon the foregoing findings and conclusions and upon the entire record in this case, I make the following:

Conclusions of Law

1. By inducing and encouraging individuals employed by Chicago Bridge, Porier and White to engage in work stoppages and refusal in the course of their employment to perform any services, by threatening, coercing and restraining Burns, Chicago Bridge, Porier and White with an object in each case of forcing and requiring White to assign the work of operating its electrical welding ma-

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[24] See *Local 825, Operating Engineers,* 145 NLRB 952; *Local 825 Operating Engineers,* 140 NLRB 458; enfd. 326 F. 2d 213 (C.A. 3), *Local 825 Operating Engineers,* 138 NLRB 279; enfd. 332 F. 2d 478 (C.A. 3); *Local 825, Operating Engineers,* 131 NLRB 452; *Local 825, Operating Engineers,* 120 NLRB 545.

[25] *Local 825 Operating Engineers* (United Engineers), 138 NLRB 279.

chine at Oyster Creek to employees engaged as operating engineers who are represented by Respondent and who are not lawfully entitled to such work rather than to employees engaged as ironworkers who were represented by the Ironworkers and were lawfully entitled to such work, Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(D) of the Act.

2. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record, it is recommended that Local Union 825, International Union of Operating Engineers, AFL-CIO, its officers, agents, representatives, successors and assigns shall:

1. Cease and desist from engaging in, or inducing or encouraging any individual employed by Porier & McLane Corporation, Chicago Bridge & Iron Company, White Construction Company, or by any other persons engaged in commerce or in an industry affecting commerce, to engage in, a strike or refusal in the course of his employment to perform any services, or from threatening, coercing, or restraining the above-named plus Burns & Roe, Inc., or any other persons engaged in commerce, where an object thereof in either case is to force or require White Construction Company, or any employer, to assign any work to employees engaged as operating engineers who are represented by Respondent rather than to employees represented by another labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act.

Appendix A

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at its place of business at Newark, New Jersey, copies of the attached notice[26] marked "Appendix."[27] Copies of said notice to be furnished by the Regional Director for the Third Region shall, after having been signed by a duly authorized representative of Respondent, be posted by Respondent immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to see that such notices are not altered, defaced or covered by other material. Upon request from the Regional Director, the Respondent shall

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[26] In keeping with Board policy, see *L. L. Glascock, Inc.*, 160 NLRB No. 74, in which the Board revised Examiner Reel's notice to make it unintelligible to the average employee, the attached notice has been drafted with the purpose of similar obfuscation. It might appear, as it seemingly did to the Trial Examiner in *Glascock*, that it would be the policy of the Board to make its decision clear to those most vitally affected by them, which in this instance would include union members as well as the employers. Such is not the case. The operating engineer who understands this notice has missed his vocation. He should be deciphering the Dead Sea scrolls.

[27] In the event that this Recommended Order be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "A RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

supply him with a sufficient number of signed copies of said notices for posting by Chicago Bridge, Porier, White and Burns, they willing, at their respective jobsite offices at Oyster Creek and other places of business.

(b) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision and Recommended Order what steps have been taken by Respondent to comply herewith.[28]

(c) It is further recommended that the complaint insofar as it alleges violations of Section 8(b)(4)(i) and (ii)(B) of the Act be dismissed.

Dated at Washington, D. C. 9/28

JOHN F. FUNKE
John F. Funke
Trial Examiner

[28] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

APPENDIX B

Decision and Order of National Labor Relations Board

162 NLRB No. 155

D-9548
Oyster Creek, N. J.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 4-CC-359

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

and

BURNS & ROE, INC.

Case No. 4-CD-144

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

and

WHITE CONSTRUCTION COMPANY

On September 28, 1966, Trial Examiner John F. Funke issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging

in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and commended that those allegations be dismissed. Thereafter, the Respondent, the General Counsel, and the Charging Parties filed exceptions to the Trial Examiner's Decision and supporting briefs. An answering brief was also filed by the Charging Parties.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision,[1] the exceptions, the briefs, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and

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[1] We specifically disavow the gratuitous, injudicious and, wholly unwarranted remarks contained in footnotes 17 and 26 and on page 9 of the Trial Examiner's Decision.

The following inadvertences contained in the Trial Examiner's Decision are hereby corrected: The name "Norton" is changed to "Wharton" (p. 8, line 22); the correct spelling of one of the employers herein is Poirier; paragraph 7(a) of the complaint refers to the forcing of Chicago Bridge, Poirier, and White to cease doing business with Burns, and paragraph 7(b) refers to the forcing of Burns to cease doing business with White (p. 9, lines 8-10); the words "Board Order" are changed to "broad Order" (p. 13, line 46).

recommendations of the Trial Examiner, insofar as they are consistent with this Decision and Order.

1. We agree with the Trial Examiner that the Respondent violated Section 8(b)(4)(i) and (ii)(D) of the Act, because it was responsible for three separate work stoppages,[2] with an object of forcing White Construction Company, herein called White, to assign work on its electric welding machine to engineers, who are members of Respondent, rather than to ironworkers who are members of Local 350, International Association of Bridge, Structural & Ornamental Ironworkers, AFL-CIO, herein called the Ironworkers.[3] With regard to an earlier work stoppage which occurred on October 1, 1965, and had the same proscribed object, the Trial Examiner found that there was sufficient evidence to hold the Respondent responsible for the strike. We do not agree.

Burns & Roe, Inc., herein called Burns, is a general contractor for Jersey Central Power and Light Company, which is constructing a nuclear power generator plant at Oyster Creek, New Jersey. Certain construction work was

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[2] These strikes, which lasted from a few days to several weeks, began on October 7, November 4, and November 16, 1965.

[3] On October 19, 1965, the National Joint Board for Settlement of Jurisdictional Disputes, Building and Construction Industry, herein called the Joint Board, after a proceeding in which all parties participated, issued an award confirming White's assignment of the disputed work to the ironworkers. The complaint herein was issued by the Regional Director for Region 4 in accordance with Section 102.93 of the Board's Rules and Regulations, Series 8, as amended, after the Respondent failed to comply with the aforesaid award. See *Electrical Workers Local 26 (McCloskey & Co.)*, 147 NLRB 1498, 1502-3.

subcontracted by Burns to White, Chicago Bridge & Iron Co. (herein called Chicago Bridge), and Poirier & McLane Corporation (herein called Poirier). These subcontractors employ operating engineers, ironworkers, carpenters, and laborers. Burns has no construction employees on the job. All the operating engineers on the project are members of the Respondent, which has bargaining contracts with Chicago Bridge and Poirier, but not with Burns and White. Prior to 1963, Burns and White, who are members of Building Contractors Association of New Jersey, were covered by a multi-employer bargaining contract with the Respondent. In January 1964, this Board found the Repondent in violation of Section 8(b)(1)(B) and (3) of the Act for attempting to bargain unilaterally with the individual members of the Association.[4]

As detailed in the Trial Examiner's Decision, during the days immediately preceding October 1, 1965, on which date all the operating engineers employed by White, Chicago Bridge, and Poirier engaged in a work stoppage, Bill Bonatz, Hank Behrend, and Bobbie Illario, agents of the Respondent, were involved in the conduct described below.

In the latter part of September, Chris Gunderson, White's construction superintendent, was approached by Bonatz and Behrend and told that an engineer would be required to push the buttons which operated an electric welding machine recently installed by White on the job.

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[4] *International Union of Operating Engineers, Local 825, et al. (Building Contractors Association of New Jersey)*, 145 NLRB 952, enfd. by consent decree entered by the U. S. Court of Appeals for the Third Circuit on August 5, 1966, in Case No. 22-CB-538 (1-2).

site. After Gunderson checked with his office and was informed that this work had been assigned to White's ironworkers who were to perform the actual welding, he relayed this information to Bonatz and Behrend. On September 30, Bonatz and Behrend again approached and told Gunderson that they were going "to knock the engineers off the crane", and they gave Gunderson three copies of a proposed agreement for White to sign. On that date, the engineer and oiler on the crane stopped work at 10 a.m. and did not return to work until about 1 p.m. on October 1.

On September 29, 1965. Giles Willis, resident construction manager for Burns, was visited by Bonatz and Behrend and told that members of the Respondent employed by subcontractors on the job had taken a vote to cease work unless Burns signed a contract with Respondent. On the next day, Bonatz, Behrend, and Illario approached Willis, who was given copies of the above-mentioned proposed contract and told that, unless Burns signed the contract by the following morning, all the operating engineers would walk off the job. On October 1, at 8 a.m., the same three agents again met Willis and asked if Burns had signed the contract.[5] When Willis replied in the negative, they left his office and proceeded to the parking lot outside the gate and engaged in conversations with the engineers who had gathered there. The engineers, who were employees of White, Chicago Bridge, and Poirier, did not report for work until 1 p.m.

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[5] The contract sought from White and Burns provided for Respondent's members to perform the disputed work. The contract also provides that any employer who becomes a party thereto could not subcontract any work covered by the agreement unless the subcontractor agreed in writing to perform all work subject to the terms and conditions of the agreement.

Appendix B

The Trial Examiner viewed the October 1 work stoppage as spontaneous conduct on the part of the engineers and found that the General Counsel did not sustain his burden of proof to show that the strike was authorized or directed by the Respondent. In our opinion, the preponderance of record evidence requires a finding that the Respondent induced and encouraged the engineers to engage in the strike. Thus, Behrend presided at a meeting of all engineers employed on the project which was held on the jobsite a few days prior to October 1. A unanimous vote was taken to strike because of White's refusal to assign the welding machine work to an engineer and because neither White nor Burns had contracts with the Respondent. Bonatz and Illario were also present at this meeting. Thereafter, there were requests that the work be performed by Respondent's members and threats of work stoppage were made by Respondent's agents. Immediately before the stoppage of October 1, Bonatz, Behrend, and Illario talked to the engineers assembled at the parking lot.[6]

Upon the foregoing facts and the entire record, we find that a preponderance of evidence establishes that the Respondent, with an object to force or require White to as-

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[6] Behrend testified that, after the strike began, he reported it to the Respondent's office and that shortly thereafter he received a message from an unidentified indivdual at that office that "there was some kind of negotiations going on and to get the men back on the job right away". It also appears that the Joint Board was notified of the dispute by telegram immediately after the strike began and the Joint Board requested the general president of International Union of Operating Engineers to direct the Respondent local union to have the men return to work immediately, pending an adjustment of the dispute.

sign the disputed work to engineers represented by the Respondent, induced on encouraged employees employed by White, Chicago Bridge, and Poirier to engage in a work stoppage on October 1, 1965, and threatened, restrained, or coerced Burns and these other employers, all in violation of Section 8(b)(4)(i) and (ii)(D) of the Act.

2. Contrary to the Trial Examiner, we find, that the Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act by its work stoppages of October 1 and 7, 1965, as alleged by the complaint in Case No. 4-CC-359.[7]

We have found that the Respondent was responsible for the strike of October 1, and in agreement with the Trial Examiner, we have found the Respondent also responsible for the strike of October 7.[8] It is clear that Respondent's

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[7] Member Fanning dissents from this finding. His view, expressed in *Local 5, Plumbers Union (Arthur Venneri Company)*, 137 NLRB 828, 834, and 145 NLRB 1580, 1601, and recently in *Millwrights Local Union 1102 (Dobson Heavy Haul, Inc.)*, 162 NLRB No. 6, is that the finding herein that a jurisdictional dispute exists in these consolidated cases precludes a finding that the Respondent's conduct for the purpose of resolving this dispute is also violative of Section 8(b)(4)(B). But see the contrary position taken by a majority of the Board in *Venneri* and *Dobson*, and the recent opinion in *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company)*, 162 NLRB No. 63, wherein the Board found violations of 8(b)(4)(B) and (D) in a consolidated proceeding.

[8] With regard to the strike which began on October 7, the evidence shows that on October 6, the Respondent threatened Willis and Telghman Suffrecal, representatives of Burns and Poirier, respectively, with a strike, and that Langlinais, project manager

(*Footnote continued on following page*)

strike threats and strikes were in furtherance of the Respondent's primary dispute with White who refused to reassign the welding machine work to engineers represented by the Respondent.[9] It is equally clear that the Respondent sought to achieve the assignment of this disputed work by applying economic pressure on neutrals to the dispute—Burns, the general contractor, and subcontractors Chicago Bridge and Poirier—with an object of causing a disruption of the business relationship among the various employers at the jobsite.[10] Unlike the Trial

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(*Footnote continued from preceding page*)

for Chicago Bridge, was told by the Respondent after the strike was under way that it resulted from the welding machine dispute. Employees of Poirier and Chicago Bridge, engaged in a work stoppage between October 7 and 11. These employees had also ceased work on October 1.

The work stoppages which began on November 4 and 16, 1965, were confined to employees of White, with whom the Respondent had a primary dispute, and are not alleged as violations of Section 8(b)(4)(B).

[9] The General Counsel has argued that the Respondent also had a primary dispute with Burns arising out of the latter's refusal to sign a contract with Respondent, and that White, Poirier, and Chicago Bridge were neutrals enmeshed in that dispute, but we perceive no useful purpose for deciding whether a violation should be predicated upon that theory. We note, however, that the apparent purpose of Respondent's request for a contract from Burns was to obtain the disputed work from White.

[10] See *Local 25, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company), supra*; *Millwrights Local Union 1102 (Dobson Heavy Haul, Inc.), supra*; *Local 1291, International Longshoremen's Association et al. (Pennsylvania Sugar)*, 142 NLRB 257, 261, enfd. 332 F. 2d 559 (C.A. 3).

Examiner, who found the object proscribed by Section 8(b)(4)(B) to be a literal cessation of business, the Board has held that an object such as the Respondent's herein, although something less than a total cancellation of a business relationship, constitutes a "cease doing business" object within the meaning of this section of the Act.[11] Here, therefore, within the meaning of the statute, an object of the Respondent was to force Burns to cease doing business with White, and to force Chicago Bridge and Poirier to cease doing business with Burns in order to compel Burns to cease doing business with White.

3. We agree with the Trial Examiner's recommendation that a broad cease and desist order is required to remedy the Respondent's unfair labor practices found violative of Section 8(b)(4)(D) of the Act. In addition to the work stoppages which stemmed from White's assignment of work, the Respondent has also been involved in jurisdictional disputes concerning the assignment of work by other employers on the Oyster Creek project and has been enjoined by the Court from engaging in other work stoppages on this project.[12] Therefore, until all building and

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[11] *Local 3, International Brotherhood of Electrical Workers, AFL-CIO (New York Telephone Company)*, 140 NLRB 729, 730; *Local 1291, International Longshoremen's Association et al. (Pennsylvania Sugar), supra.*

[12] *Bernard Samoff, Regional Director, et al.* v. *Local No. 825, International Union of Operating Engineers, AFL-CIO*, Civil No. 66-66, consent decree entered on February 1, 1966, by U. S. District Court for the District of New Jersey. See also this Board's Decision and Determination of Dispute, *Local 825, IUOE (Utilities Line Construction Co., Inc.)*, 159 NLRB No. 131.

construction work at the Oyster Creek project is completed, we shall order the Respondent to cease and desist from forcing or requiring White or any other employer engaged on the project to assign any work to employees represented by the Respondent rather than to employees represented by another labor organization, except insofar as permitted by Section 8(b)(4)(D) of the Act.

Having found that the Respondent has also engaged in violations of Section 8(b)(4)(B) and because of the Respondent's demonstrated proclivity to engage in unlawful secondary activities, as noted in the Trial Examiner's Decision, we shall issue a broad cease and desist order to prevent the Respondent from committing future violations in its disputes with White and other primary employers.[13]

Additional Conclusions of Law

1. By inducing and encouraging the employees of Chicago Bridge and Poirier to engage in work stoppages, and by threatening, coercing, and restraining these employers and Burns with an object in each case of forcing or requiring Chicago Bridge and Poirier to cease doing business with Burns, and with a further object of forcing or requiring Burns to cease doing business with White, the Respondent has engaged in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the Act.

2. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

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[13] See *Local 825, International Union of Operating Engineers, AFL-CIO (United Engineers & Constructors, Inc.)*, 138 NLRB 279, 280, enfd. 332 F. 2d 478 (C.A. 3).

Appendix B

Order

Upon the entire record in these cases and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Local No. 825, International Union of Operating Engineers, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Engaging in, or inducing or encouraging any individual employed by Chicago Bridge & Iron Co., Poirier & McLane Corporation, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any services; or threatening, coercing, or restraining Chicago Bridge & Iron Co., Poirier & McLane Corporation, Burns & Roe, Inc., or any other person engaged in commerce or an industry affecting commerce, where, in either case, an object thereof is to force or require Chicago Bridge & Iron Co., Poirier & McLane Corporation, or any other person, to cease doing business with Burns & Roe, Inc., or any other person, or to force or require Burns & Roe, Inc., or any other person to cease doing business with White Construction Company, or any other person.

(b) Engaging in, or inducing or encouraging any individual employed by White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any services; or threatening, coercing, or restraining White Construction

Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, Burns & Roe, Inc., or any other person, where, in either case, an object thereof is to force or require White Construction Company, or any other person engaged on the Oyster Creek, New Jersey, project, to assign any work to employees who are represented by the Respondent, rather than to employees who are represented by another labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix".[14] Copies of said notice, to be furnished by the Regional Director for Region 4, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail copies of said notice to the Regional Director for posting by White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corpora-

[14] In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

tion, and Burns & Roe, Inc., these companies willing, at all locations where notices to their respective employees are customarily posted.

(c) Notify the Regional Director for Region 4, in writing, within 10 days from the date of this Decision, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C., Feb. 13, 1967.

FRANK W. MCCULLOCH,
Chairman

JOHN H. FANNING,
Member

GERALD A. BROWN,
Member
NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX C

Opinion of the United States Court of Appeals

(Filed April 25, 1969.)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17180

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,
Respondent.

BURNS AND ROE, INC., AND WHITE CONSTRUCTION COMPANY,
Intervenors.

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Argued December 5, 1968

Before: HASTIE, Chief Judge and KALODNER, *Circuit Judge.*

By HASTIE, Chief Judge.

This case is before us on a petition of the National Labor Relations Board for enforcement of a cease and desist order based upon the Board's finding that the respond-

ent, Local 825, International Union of Operating Engineers, violated section 158 (b)(4)(D) of the National Labor Relations Act, 29 U.S.C. § 158(b)(4)(D), by coercing White Construction Co., an employer, with the object of compelling White to assign the starting and stopping of an electric welding machine to operating engineers represented by Local 825 rather than to the ironworkers who used the machine and were represented by Ironworkers Local 350. The Board also found that in connection with the same controversy Local 825 had violated section 8(b)(4)(B) of the Act by conduct in the nature of a secondary boycott against other employers in an effort to compel them to cease doing business with White. This conduct also was interdicted by the cease and desist order.

The Board's factual findings relevant to the alleged section 8 (b)(4)(D) violation are adequately supported by the record. It appears that White undertook as a subcontractor to construct the reactor building for a projected nuclear power plant. In the course of the job White assigned to its ironworker employees the work of starting and stopping an electric welding machine that they used in welding structural steel. At that time White had no contract with Local 825 though White's work force included two members of that union, an engineer and an oiler who operated a crane.

At this juncture a representative of Local 825 demanded that White employ a member of that Union to push the buttons that started and stopped the welding machine. When White failed to comply and to sign an agreement giving Local 825 jurisdiction that would include electric welding machines, the crane engineer and oiler stopped work for one day. More prolonged work stoppages by the engineers occurred during the ensuing weeks. The

Board found the union responsible for these work stoppages and the record fully supports that conclusion.

Both Local 825 and the Ironworkers' Union were obligated by contract with the Building Trades Employers' Association to recognize the jurisdiction of the National Joint Board for the Settlement of Jurisdictional Disputes and "to be bound by all decisions and awards" made by that body in exercise of its agreed jurisdiction. Accordingly, the matter of the work claimed by Local 825 in connection with the use of electric welding equipment was referred to the Joint Board. That Board issued an award confirming White's assignment of the work in question to the ironworkers.

Although in its answer to the complaint in this case Local 825 admitted that it was bound, as its contract with the Employers' Association provided, by the award of the Joint Board, it refused to respect the award when it was made. Rather, it persisted in its demand that the disputed work be assigned to operating engineers and in its coercive tactics to enforce that demand. This unfair labor practice proceeding followed.

The union asserts two principal defenses; first, that there was no such claim by the ironworkers to the work in question as would create a jurisdictional dispute; and second, that the present unfair labor practice decision is invalid because it was not preceded by and grounded upon a Board award of the claimed work to a particular craft in a section 10(k) proceeding, 29 U.S.C. § 160(k).

The contention that there were no conflicting claims creating a jurisdictional dispute is without merit. The employer's original assignment of ironworkers to start and stop the electric welding machines they were to use may

well have been made routinely without any demand by those employees or their union. However, they did accept this work as an incident of their job. This entire dispute grows out of that work assignment and its acceptance.

More important, the Ironworkers Union and the Union of Operating Engineers were opposing parties in the ensuing proceeding before the Joint Board to determine which craft should perform the work in question. The Ironworkers prevailed thereby establishing their right to the work under the procedure agreed to by all of the parties. Thereafter, ironworkers performed the work as a matter of established right. And they have not disclaimed that right. In these circumstances, it is specious to argue that the persisting demand of the operating engineers that the work be assigned to them does not create a jurisdictional dispute. *Cf. N.L.R.B.* v. *Local 1291 International Longshoremen's Ass'n* 3d Cir. 1966, 368 F. 2d 107; *N.L.R.B.* v. *Local 25, International Brotherhood of Electrical Workers*, 2d Cir. 1967, 383 F. 2d 449. "The fact that one union has the jobs and holds on to them in a polite, non-belligerant manner while the other union uses the forbidden tactics in an effort to get them, or some of them, does not mean that what Congress regarded as the evils of a jurisdictional dispute are not present." *International Brotherhood of Carpenters* v. *C. J. Montag & Sons, Inc.*, 9th Cir. 1964, 335 F. 2d 216, 221.

The respondent's second contention is that this unfair labor practice proceeding is premature because the Board did not first utilize a proceeding under section 10(k) of the Act to make a decisive award of the work to one craft or the other.[1]

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[1] Whether this contention should fail here because it was not advanced before the Board, we do not decide.

Appendix C

In most cases a Board award under section 10(k) and a refusal to abide by that award must precede an unfair labor practice proceeding based on a jurisdictional dispute. *N.L.R.B.* v. *Radio and Television Broadcast Engineers, Local 1212* (*C.B.S.*), 1961, 364 U. S. 573; *N.L.R.B.* v. *United Ass'n of Journeymen*, 3d Cir. 1957, 242 F. 2d 722. However, we agree with the Board that in the circumstances of this case a section 10(k) proceeding was not necessary. That section reads as follows:

> "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of Section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed."

It will be observed that the statute expressly provides for the discontinuance of a section 10(k) proceeding where the parties show that they have "agreed upon methods for the voluntary adjustment of the dispute". The present parties had agreed in advance upon a method of voluntary adjustment and did in fact utilize that method in this case. We cannot believe that Congress intended to require a section 10(k) proceeding after a binding voluntary settlement of a dispute when the legislative scheme pro-

vides for the discontinuance of a section 10(k) proceeding if such an adjustment shall occur during its pendency. *Wood, Wire and Metal Lathers Union (Acoustical Contractors)*, 1958, 119 N.L.R.B. 1345, cited with approval, *Carey* v. *Westinghouse Corp.*, 1963, 375 U.S. 261, 264 n.4. Indeed, in the present circumstances a section 10(k) proceeding would be a pointless formality. For having agreed to the settlement of jurisdictional disputes by the Joint Board and having experienced an adverse ruling in this case, Local 825 is in no position to challenge the merits of that ruling before another tribunal. *Cf. Electrical Workers Local 26 (McCloskey & Co.)*, 1964, 147 N.L.R.B. 1498.[2]

Accordingly, we conclude that a violation of section 8 (b)(4)(D) has been properly established.

Different issues arise under the charge of secondary boycott in violation of section 8(b)(4)(B). This charge involves contractors additional to White. Burns & Roe, Inc., was the general contractor for the entire nuclear power plant project. It subcontracted all of the construction work and thus had no construction employees. Chicago Bridge & Iron Co. and Poirier & McLane Corp.,

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[2] In an effort to avoid this conclusion the respondent has cited cases in which a section 10(k) hearing has been required after some third party has decided that one union rather than the other should be assigned the disputed work. *E.g., International Union of Operating Engineers, Local 520 (Biebel Bros.)*, 1968, 170 N.L.R.B. No. 38; *Plasterers Local Union 79*, 1967, 167 N.L.R.B. No. 23; *Albany Printing Pressmen*, 1967, 166 N.L.R.B. No. 71; *United Industrial Workers, Seafarers (Albin Stevedore Co.)*, 1967, 162 N.L.R.B. No. 96. But in none of these cases was the decison of the third parties one by which the parties were bound, whether by contractual agreement or otherwise.

as well as White, were subcontractors working at the project site. The Board's conclusion that section 8(b)(4)(B) had been violated was based on findings that the respondent had coerced Burns and its subcontractors other than White in an effort to force Burns to "cease doing business" with White.

The record amply justifies the conclusion that these contractors were subjected to coercion in the form of threats or walkouts or both. The debatable issue is whether the object of this coercion was to force Burns to "cease doing business" with White within the meaning of section 8(b)(4)(B).

It was not the Board's theory, nor does it seem seriously to be contended that the respondent sought to compel Burns to stop using the services of White or to terminate its contract with White. Indeed, such action would not have been advantageous to the respondent. Rather, it is said that the respondent undertook to "disrupt the business relation" between Burns and White so that the contractor would try to induce the subcontractor to comply with the respondent's demands. The question is whether conduct so intended seeks to compel the one contractor to "cease doing business" with the other within the meaning of section 8(b)(4)(B).

We considered a similar situation in *N.L.R.B.* v. *Local 825, International Union of Operating Engineers,* 3d Cir. 1964, 326 F. 2d 218, and concluded that the finding of a "cease doing business" objective was not warranted. It is now urged that this case is distinguishable from that one because in the earlier case the work stoppages, though to the neutral employer's detriment, were not attended by any communication of the union with that employer. How-

ever, the disruption of the neutral employer's business activity in connection with the primary employer and the objective of exerting pressure upon the primary employer through the neutral one was essentially the same there as here. Indeed, we quoted but did not approve the Board's finding:

> '". . . Even, assuming, *arguendo,* that Respondent merely intended by its strike to force Selby and Elmhurst to require Nichols to change its method of operation, this in itself would have disrupted or seriously curtailed the existing business relationship between Nichols and these two other contractors, which would have been tantamount to causing the latter employers to cease doing business with Nichols."' 326 F. 2d at 220.

Moreover, in neither case did the union admit a "cease doing business" objective was, but rather in both cases the circumstances compelled the inference that the union wanted the contractor to use its influence with the subcontractor to change the subcontractor's conduct, not to terminate their relationship.

Accordingly, following our earlier decision, we hold that proof of coercive activity amounting to "disruption of a business relationship" and aimed at causing a neutral employer to put pressure on the primary employer is insufficient, without more, to establish an effort to compel the one employer to "cease doing business" with the other. The language of section 8(b)(4)(B) is apt to prohibit the classical secondary boycott where the attempt is made to coerce the primary employer by compelling others to stop trading or otherwise dealing with him. But we think the

"cease doing business" language is not apt to cover the objective proved here, however objectionable or deserving of condemnation it may be. *But cf. N.L.R.B.* v. *Carpenters District Council of New Orleans and Vicinity, AFL-CIO*, 5th Cir., No. 25408, decided February 19, 1969. We think it is for Congress to broaden the language of section 8(b)(4)(B) if it desires to cover such situations as this.

Finally, we consider objections of the respondent to the breadth of the Board's cease and desist order.

Paragraph 1(a) of the order restrains violations of section 8(b)(4)(B). That subparagraph will not be enforced because no violation of section 8(b)(4)(B) has been established.

An understanding of the controversy concerning the reach of paragraph 1(b) of the order requires quotation of that subparagraph in full. It prohibits the respondent from

> "(b) Engaging in, or inducing or encouraging any individual employed by White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any services; or threatening, coercing, or restraining White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, Burns & Roe, Inc., or any other person, where, in either case, an object thereof is to force or require White Construction Company, or any other person engaged on the Oyster Creek, New Jersey, project, to assign any work to employees

who are represented by the Respondent, rather than to employees who are represented by another labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act."

We read this language as covering any jurisdictional dispute which may arise in connection with the performance of any contract or subcontract on the present nuclear power plant project, so long as the Board has not determined that members of a particular union craft are entitled to the work in question. To enforce this order would mean that, in any such case, the respondent would be guilty of contempt if by any coercive means it should seek a resolution of a jurisdictional dispute in its favor. The vice of this, the respondent argues, is that the union is forced to accept whatever work assignment the employer may make. For, under the scheme of the Act, the Board will not entertain a section 10(k) proceeding to resolve a jurisdictional dispute unless it has reason to believe that a union is engaging in the very kind of activity which under the Board's order would be contempt of court. See *Local 478, International Union of Operating Engineers,* 1968, 172 N.L.R.B. No. 221.

We think the union's argument, whatever validity it might have in some cases, overlooks an important circumstance in this case. The contractors and the labor organizations in the building trades involved in this project have voluntarily agreed to the adjustment and resolution of jurisdictional disputes through resort to and decision by the Joint Board. Just as a contractor took the present dispute to the Joint Board, the respondent is free to take any similar future dispute concerning the assignment of work on the project to the Joint Board. The proposed decree

would not in any way interfere with the utilization of that agreed method of settling jurisdictional disputes. Only if any employer should refuse to comply with a Joint Board award might the proposed order's prohibition of coercive action unfairly restrain the respondent. Accordingly, we think appropriate language should be added at the end of the order to except from its prohibition coercive action aimed at enforcement of a Joint Board decision. *Cf. Local 26, International Fur Workers, (Winslow Bro. & Smith Co.),* 1950, 90 N.L.R.B. 1379. But, with that minor modification, we conclude that paragraph 1(b) of the Board's order does not overstep that broad administrative discretion in fashioning appropriate remedies which we have repeatedly recognized. *E.g. N.L.R.B.* v. *Local 542, International Union of Operating Engineers,* 3d Cir. 1964, 329 F. 2d 512; *N.L.R.B.* v. *Highway Truck Drivers and Helpers, Local No. 107,* 3d Cir. 1962, 300 F. 2d 317. In reaching this conclusion we have considered the respondent's persistent disposition to violate the provisions of section 8(b)(4) as demonstrated by the numerous cases in which this court has found it necessary to enforce Board orders against it and at least two cases in which we have found it necessary to invoke our contempt power to obtain the respondent's compliance with our orders.[3]

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[3] *E.g., N.L.R.B.* v. *Weber,* 3d Cir. 1967, 382 F. 2d 387; *N.L.R.B.* v. *Local 825, I.U.O.E.,* 3d Cir. 1964, 326 F. 2d 213; *N.L.R.B.* v. *Local 825, I.U.O.E.,* 3d Cir. 1963, 322 F. 2d 478; *N.L.R.B.* v. *Local 825, I.U.O.E.,* 3d Cir. 1963, 315 F. 2d 695.

In addition, this court has found it necessary in one case to adudge Local 825 in contempt for refusal to comply with our decree enforcing a Board order. *N.L.R.B.* v. *Local 825,* No. 14,331 Order of June 18, 1964. A second such proceeding is pending at Nos. 17,091 and 17,092.

Appendix C

The order of the Board, modified and restricted in accordance with this opinion, will be affirmed.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

APPENDIX D

Judgment of the United States Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17180

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,
Respondent,

BURNS AND ROE, INC., AND WHITE CONSTRUCTION COMPANY,
Intervenors.

Before:

HASTIE, CHIEF JUDGE and KALODNER, CIRCUIT JUDGE.

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board to enforce its order dated February 13, 1967, against the above-named Respondent, its officers, agents, and representatives. The Court heard argument of respective counsel on December 5, 1968, and has considered the briefs and transcript of record filed in this case. On April 25, 1969, the Court, being fully advised in the premises, handed down its opinion granting enforcement of the Board's order as modified. In conformity therewith, it is hereby

Appendix D

ORDERED AND ADJUDGED by the Court that the Respondent, Local No. 825, International Union of Operating Engineers, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Engaging in, or inducing or encouraging any individual employed by White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, or any other person engaged in commerce or an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform any services; or threatening, coercing, or restraining White Construction Company, Chicago Bridge & Iron Co., Poirier & McLane Corporation, Burns & Roe, Inc., or any other person, where, in either case, an object thereof is to force or require White Construction Company, or any other person engaged on the Oyster Creek, New Jersey, project, to assign any work to employees who are represented by the Respondent, rather than to employees who are represented by another labor organization, except insofar as any such action is permitted under Section 8(b)(4)(D) of the Act, and except insofar as such action is aimed at enforcement of a decision of the National Joint Board for Settlement of Jurisdictional Disputes.

2. Take the following affirmative action which the Board has found will effectuate the policies of the Act:

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix". Copies of said notice, to be furnished by the Regional Director for Region 4, (Philadelphia, Pennsylvania), shall, after be-

ing duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail copies of said notice to the Regional Director for posting by White Construction Company, Chicago Bridge & Iron Co. Poirier & McLane Corporation, and Burns & Roe, Inc., these companies willing, at all locations where notices to their respective employees are customarily posted.

(c) Notify the said Regional Director, in writing, within 10 days from the date of this Judgment, what steps the Respondent has taken to comply herewith.

BY THE COURT

WILLIAM H. HASTIE
Circuit Judge

Dated: May 29, 1969

APPENDIX

NOTICE TO ALL MEMBERS
PURSUANT TO

A Judgment of the United States Court of Appeals enforcing as modified an order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended we hereby notify you that:

Appendix D

WE WILL NOT induce or encourage any individual employed by WHITE CONSTRUCTION COMPANY, CHICAGO BRIDGE & IRON CO., POIRIER & MCLANE CORPORATION, or any other employer, to engage in a strike or a refusal in the course of his employment to perform any services; or threaten, coerce, or restrain the above-named companies, and BURNS & ROE, INC., or any other employer, where an object in either case is to force or require WHITE CONSTRUCTION COMPANY, or any other employer engaged on the Oyster Creek, New Jersey project, to assign any work to employees represented by LOCAL No. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, rather than to employees represented by another labor organization, except insofar as any such action is lawful under Section 8(b)(4)(D) of the Act, and except insofar as such action is aimed at enforcement of decision of the National Joint Board for Settlement of Jurisdictional Disputes.

LOCAL No. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the day of posting, and must not be altered, defaced, or covered by any other material.

If members have any questions concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 1700 Bankers Securities Building, Walnut & Juniper Streets, Philadelphia, Pennsylvania, 19107 (Tel. No. 597-7601).

APPENDIX E

Petition for Rehearing, and Suggestion for Rehearing *In Banc*

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17,180

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,
Respondent,

and

BURNS AND ROE, INC., AND WHITE CONSTRUCTION COMPANY,
Intervenors.

The National Labor Relations Board respectfully petitions the Court to grant rehearing, and suggests rehearing in banc, of the decision entered in this case on April 25, 1969, by a panel of the Court (Chief Judge Hastie and Judge Kalodner), insofar as it rejects the Board's finding that the Union violated Section 8(b)(4)(B) of the National Labor Relations Act. We submit that the panel decision in this regard is erroneous, and contrary to the principles applied by this and other courts of appeals.

1. In furtherance of its effort to force White to employ additional members of respondent Local 825 rather than

members of the Ironworkers' Union, Local 825 not only caused a work stoppage of the two White employees who were members of Local 825 (action which the Board found, and the Court agreed, violated Section 8(b)(4)(D) of the Act), but it also exerted coercive pressure against general contractor Burns and subcontractors Chicago Bridge and Poirier—neutral, secondary employers. The Board found that the latter action was violative of Section 8(b)(4)(B) of the Act[1] even though in terms at least, it sought something less than a total cancellation of the business relationship with White, *i.e.*, the neutral employers were required only to induce White to displace its ironworker employees with members of Local 825. 162 NLRB 1617, 1620-1622 (1967). The Court declined to sustain the 8(b)(4)(B) finding on the ground that (slip op., p. 7):

> The language of Section 8(b)(4)(B) is apt to prohibit the classical secondary boycott where the attempt is made to coerce the primary employer by compelling others to stop trading or otherwise dealing with him. But we think the "cease doing business" language is not apt to cover the objective proved here, however, objectionable or deserving of condemnation it may be. . . .

---

[1] Section 8(b)(4)(B) makes it an unfair labor practice for a union to exert strike or other coercive pressure on a neutral secondary employer, for an object of:

> . . . forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person. . . .

2. Congress' objective, in enacting Section 8(b)(4)(B) (formerly Section 8(b)(4)(A)) was to restrict the area of industrial conflict by shielding "unoffending employers and others from pressures in controversies not their own." *N.L.R.B.* v. *Denver Bldg. Trades Council*, 341 U.S. 675, 692 (1951). This purpose is substantially impaired by interpreting the "cease doing business" language, which defines the object proscribed by that section (n. 1, *supra*), in the narrow and literal manner utilized by the Court. For, in many secondary boycott situations, the offending union's preferred objective is not to force an actual or total cessation of business, but rather to compel the primary employer, through pressure exerted on neutral employers, merely to change his method of doing business so as to satisfy the union's demands; only if the primary employer refuses to yield, is the union's purpose aided by the removal of the primary employer entirely.

The language of Section 8(b)(4)(B) can reasonably be interpreted so as to close this "loophole." As the Board explained in *Local 3, Int'l Bro. of Electrical Workers*, 140 NLRB 729, 731 (1963), which involved a situation analogous to that here:

> While it does not appear that Respondent explicitly demanded that the Company cancel the Delee contract if Delee refused to use its members, this was the only alternative the Company had if Delee continued to refuse replacement of its employees by members of Respondent. . . . [Moreover,] [e]ven assuming, *arguendo*, that Respondent did not consciously contemplate imposition of this sanction, it is nonetheless clear that Respondent sought by its threat to require that the Company superimpose upon its existing agreement with Delee

an added condition of performance, that the work had to be done by Respondent's members. Acceptance of this condition by Delee would require the Company to cease doing business with Delee on the basis of their original arrangement. . . .

3. Accordingly, where, as here, the union's basic objective is not to force a total cessation of business relations, but merely to alter the conditions under which the business relation was first entered into, the courts of appeals have consistently sustained the Board's finding of a Section 8(b)(4)(B) violation. See, *e.g.*, *N.L.R.B.* v. *Carpenters District Council*, 407 F. 2d 804, 806 (C.A. 5, 1969); *N.L.R.B.* v. *Milk Wagon Drivers' Union, Local 753*, 335 F. 2d 326, 328 (C.A. 7, 1964); *N.L.R.B.* v. *Local 3, Int'l Bro. of Electrical Workers*, 325 F. 2d 561 (C.A. 2, 1963), enforcing, 140 NLRB 729 (1963); *Retail Fruit and Vegetable Clerks, Union Local 1017* v. *N.L.R.B.*, 249 F. 2d 591, 595 (C.A. 9, 1957). See also *Alpert* v. *Local 1066, Int'l Longshoremen's Assoc.*, 166 F. Supp. 22, 25 (D. Mass., 1958), Aldrich, J.

This Court, too, has sustained similar Board findings. *N.L.R.B.* v. *Int'l Longshoremen's Assoc.*, 331 F. 2d 712, 716-717 (C.A. 3, 1964); *N.L.R.B.* v. *Local 1291, Int'l Longshoremen's Assoc.*, 332 F. 2d 559 (C.A. 3, 1964), enforcing, 142 NLRB 257, 260-261 (1963). Particularly significant is the Court's ruling in *A. Duie Pyle, Inc.* v. *N.L.R.B.*, 383 F. 2d 773, 775 (C.A. 3, 1967), which, although it arose under Section 8(e) of the Act, is equally relevant for Section 8(b)(4)(B):[2]

---

[2] The Supreme Court, in *National Woodwork Mfrs. Assoc.* v. *N.L.R.B.*, 386 U.S. 612 (1967), made plain that the two provisions were intended to complement each other and are thus to be read together.

Appendix E

> At the threshold of our inquiry is the question whether the agreement requires a cessation of business with the owner-operators and fleet-owners since by its terms it would permit them to retain the work if they became employees of the carrier and joined the union. The requirement that the owner-operators and fleet-owners must become employees of the carriers prohibits a carrier by implication from doing business with those who do not become its employees and thus requires it "to cease doing business" within the meaning of § 8(e). [Citing, *inter alia*, the Board decision in the instant case, see n. 9.]. . . . While it is true that not every incidental alteration in the relationship between the parties to the subcontract would rise to the extent of constituting an agreement to cease doing business, the provisions before us are so drastic in their impact on the continued relationship of the independent subcontractors with the carriers that they fall clearly within the area regulated by § 8(e) [citing *Local 3, supra*].

So here, the Union's demand that White hire additional members of Local 825, though perhaps less dramatic, nonetheless required such a substantial alteration in the original terms of his business relation with Burns and the other neutral employers as to "fall clearly within the area regulated by" Section 8(b)(4)(B).[3]

---

[3] *N.L.R.B.* v. *Local 825, Operating Engineers*, 326 F. 2d 213 (C.A. 3, 1964), relied on by the panel (slip op., pp. 6-7) is of questionable validity, since it antedates the other decisions of the Court cited above, including *A. Duie Pyle*. Moreover, the thrust of the Court's holding in the earlier *Local 825* case was that there was insufficient evidentiary support for the Board's finding that the union had engaged in acts of coercion; there is ample support for such a finding here.

Appendix E

CONCLUSION

For these reasons, the case should be reheard, either by the panel or in banc, and, after such rehearing, a decree should be entered enforcing the Board's order in full.

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General Counsel,

DOMINICK L. MANOLI,
Assistant General Counsel,

MARCEL MALLET-PREVOST,
Assistant General Counsel.

NANCY M. SHERMAN,
MICHAEL F. ROSENBLUM,
Attorneys,

National Labor Relations Board.
Washington, D. C. 20570.

May 1969

APPENDIX F

Order Denying Petition for Rehearing

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17,180

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LOCAL NO. 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,
Respondent,

BURNS AND ROE, INC., AND WHITE CONSTRUCTION COMPANY,
Intervenors.

SUR PETITION FOR REHEARING

Present:

HASTIE, CHIEF JUDGE, and KALODNER, FREEDMAN, SEITZ, ALDISERT and STAHL, CIRCUIT JUDGES

The petition for rehearing filed by National Labor Relations Board, Petitioner in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for

rehearing and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

(Sgd) WILLIAM H. HASTIE
Chief Judge

Dated: June 12, 1969

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM—1969

No. ~~657~~ 40

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN SUPPORT OF PETITION FOR BURNS AND ROE, INC. AND WHITE CONSTRUCTION COMPANY

APRUZZESE & MCDERMOTT,
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FRANCIS A. MASTRO,
On the Brief.

IN THE

Supreme Court of the United States

OCTOBER TERM—1969

No. 557

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN SUPPORT OF PETITION FOR BURNS AND ROE, INC. AND WHITE CONSTRUCTION COMPANY

Statement

This case arises from proceedings in the Third Circuit, Case No. 17,180, on petition of the National Labor Relations Board (hereinafter called N.L.R.B.) for enforcement of a Cease and Desist Order against Local 825, Interna-

tional Union of Operating Engineers, AFL-CIO, in which respondents Burns and Roe, Inc. and White Construction Company (hereinafter called Respondents) participated as Intervenors, being the charging parties in the proceedings before the N.L.R.B.

The Solicitor General on behalf of the National Labor Relations Board has petitioned for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in Case No. 17,180 insofar as it denies enforcement of the Section 8(b)(4)(B) portion of the Board's order.

The Respondents herein have likewise petitioned for a Writ of Certiorari as to said Case No. 17,180 which Petition was filed on September 10, 1969 under Docket No. 570.

The Petitions of the Board and the Respondents pose essentially the same question, and as stated above arise from the same judgment of the Third Circuit.

Reasons for Granting the Writ

Respondents, for the reasons expressed in their Petition in Docket No. 570 and for those asserted by the N.L.R.B. herein, urge the Court in the exercise of its judicial discretion to consider jointly and grant both Petitions. They raise a question of great and recurring significance in the interpretation of the National Labor Relations Act which, in view of the stated conflict among Circuits, must be resolved in order to assure national uniformity in labor relations under the Act.

CONCLUSONS

For the reasons stated, the Petitions for Writs of Certiorari filed by the N.L.R.B. herein and by Respondents in Docket No. 570 should both be granted.

Respectfully submitted,

APRUZZESE & MCDERMOTT,
Attorneys for Respondents Burns and Roe, Inc. and White Construction Company,
By VINCENT J. APRUZZESE,
A Partner.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1969

Nos. 500 AND 557

NATIONAL LABOR RELATIONS BOARD
and BURNS AND ROE, INC., and
WHITE CONSTRUCTION COMPANY,

Petitioners,

vs.

LOCAL 825 INTERNATIONAL UNION OF
OPERATING ENGINEERS AFL-CIO,

Respondent.

BRIEF IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable, the Chief Justice of the United States Supreme Court and the Associate Justices of the United States Supreme Court:

Respondent prays that the Petitions for Writs of Certiorari to review the Judgment of the United States Court of Appeals for the Third Circuit entered in the above case on May 29, 1969 be denied.

The Opinions Below

The National Labor Relations Board Trial Examiner's decision issued September 28, 1966. The National Labor Relations Board's decision and order was made on February 13, 1967 and is reported at 162 NLRB 1617. The Court of Appeals filed its Judgment May 29, 1969. The opinion is reported at 410 F. 2d 5. (See Appendices A, B and C of Petitioner Burns & Roe, Inc.'s Brief).

Questions Presented By The Petitioners

The Petitioner National Labor Relations Board sets forth as its questions presented the following:

Whether a union violates Section 8 (b) (4) (B) of the National Labor Relations Act by exerting coercive pressure upon a neutral employer, that compels such employer either (1) to induce the primary employer to change his method of doing business or (2) to cease doing business entirely with the primary employer.

The Petitioner Burns and Roe Inc. and White Construction Co. contend that the question presented is whether to prove a violation of the secondary boycott provisions of the National Labor Relations Act, it is necessary to establish that a union's object is to bring about a total cessation of business between the neutral and primary employer.

It is respectfully submitted that the questions presented by both petitioners do not accurately reflect the holding of the Court of Appeals for the Third Circuit. The questions presented by the Petitioner, National Labor Relations Board do not appear, it is submitted, in the holding of the Court. Likewise, the question submitted by the other Petitioner does not appear in the holding of the Court. In addition both Petitioners contend that questions of law are

involved in the holding of the Court and that complex questions of interpretation and construction result from said holding. The Respondent does not agree.

Reasons For Denying The Applications

It is submitted that the Court of Appeals for the Third made no more than a finding of fact that the evidence was insufficient to establish that an object of the union's conduct was to force or require any employer to cease doing business with any other employer in this regard. The Court held that the evidence before it ". . . compelled the inference that the Union wanted the contractor to use its influence with the sub contractor to change the sub contractor's conduct, not to terminate their relationship" 410 F. 2d at Page 10.

Accordingly, the sole question presented by the holding of the Court is whether on the factual record before it did the Union violate the secondary boycott provisions of the National Labor Relations Act? The court, although not specifically in effect, applied the standards of *Universal Camera Corp. v. National Labor Relations Board,* 340 U.S. 474, and held that the record did not contain substantial evidence to establish an illegal objective and therefore, refused to enforce the order of the NLRB.

The question of illegal objective under Section 8 (b) (4) (B) of the National Labor Relations Act is one of fact and not law, and both the NLRB and the Courts of Appeals have treated this issue as being factual in nature. See *Bedding, Curtain and Drapery Workers Union v. NLRB,* 390 F. 2d 495, 499 (CA 2) and *Painters Union (J.M. Miller Decorating Co.),* 156 NRLB No. 32.

In the latter case, a union made a threat to a general contractor that if the dispute with a subcontractor was not resolved, the Union would picket the job site. The Board

held that the threat was made to elicit the contractor's aid in its dispute with the subcontractor and that under the circumstances of the case, the reasonable inference was that the union was seeking to have the contractor influence the subcontractor to have the latter comply with the Union's demands. In this connection, the Board stated that one of the circumstances it considered was the fact that the union did not request the contractor to cease doing business with the subcontractor. The facts in the instant case as held by the Court below warranted a similar inference.

While both petitioners frame the issues as questions of law, casting the issues as one of law rather than as one of fact, does not conceal the true nature of the holding below. C.R., *NLRB v. J. H. Rutter-Rex Mfg. Co.*, United States Supreme Court, decided December 15, 1929. (Dissenting opinion of the Chief Justice, Mr. Justice Douglas and Mr. Justice Harlan).

As a result of the foregoing it is further submitted that no substantial question of law exists, no unique construction or interpretation of a statute exists, and in view of the factual nature of the holding, no conflict of decisions of Courts of Appeals exists.

The role of this Court upon review is set forth in the *Universal Camera Case* cited above. The Court in that case held:

> ". . . Our power to review the correctness of application of the present standard ought seldom to be called into action. Whether on the record as a whole there is substantial evidence to support agency findings is a question which Congress has placed in the keeping of the Courts of Appeals. This Court will intervene only in what ought to be the rare instance when the standard appears to have been misapprehended or grossly misapplied. . . ."

CONCLUSION

For the reasons herein above it is respectfully submitted that the Petitions for Writ of Certioriari should be denied.

Respectfully submitted,

THOMAS E. DURKIN, JR.
Attorney for Respondent

By: Earl S. Aronson /s/
EARL S. ARONSON

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

~~42~~

No. ~~570 - 659~~ 40

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LOCAL 825 INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

BRIEF FOR ASSOCIATED BUILDERS AND CONTRACTORS, INC., AS AMICUS CURIAE

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 570

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

LOCAL 825 INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF FOR ASSOCIATED BUILDERS AND CONTRACTORS, INC., AS AMICUS CURIAE

I. INTRODUCTION

This amicus curiae brief is submitted by the Associated Builders and Contractors, Inc. as provided in Rule 42(2) of the Rules of the Supreme Court, all petitioners and respondents having given their consent for the Associated Builders and Contractors to file as *amicus curiae.*

II. INTEREST OF ASSOCIATED BUILDERS AND CONTRACTORS, INC.

The Associated Builders and Contractors, Inc., herein at times called ABC, is a Maryland, non-profit association with headquarters near Baltimore, that has chapters in

18 states and represents approximately 3,200 members. Its membership consists of contractors, subcontractors and other business enterprises, such as suppliers, dealers and financial institutions who are involved in construction.

~~The Court has consolidated Cases No. 570 and 558,~~ but ABC limits its participation to the issue of No. 570 involving the interpretation of Section 8(b)(4)(B) of ~~the National Labor Relations Act.~~

Although this case results from a labor dispute involving two unions and three subcontractors with whom they have labor contracts or for whom their members are working, a vast number of secondary boycotts involve unions and subcontractors whose employees do not choose to belong to a union. Most of the subcontractor members of ABC do not operate under union contracts; thus, they and their employees are frequent victims of union secondary boycotts. ABC has noted that the views of the unorganized contractor are not represented in this case; thus, this brief presents the views of ABC members who are a sizeable segment of the construction industry.

III. QUESTION PRESENTED

Is a forced partial cessation of business or a disruption of business sufficient to violate the "cease doing business" prohibition of Section 8(b)(4)(B) of the National Labor Relations Act?

IV. SUMMARY OF FACTS

Burns and Roe, Inc., a general contractor, obtained a contract in September, 1964, to construct a $68 million nuclear power generating plant at Oyster Creek, N. J., for the Jersey Central Power and Light Co. Burns and Roe did no construction work but subcontracted all construction to three subcontractors all of whom employed

members of Local 825 of the Operating Engineers union. Two of the three subcontractors, the Chicago Bridge and Iron Company and the Poirier and McClane Corporation, had contracts with Local 825. The third subcontractor, the White Construction Company, did not have a contract with the engineers, but employed members of their local. White also employed members of the Iron Workers union.

The dispute and subsequent secondary boycott arose when White began its work on the project in September, 1965. The Engineers union demanded that White employ its members to push the start-and-stop button on electric welding machines it was using to weld structural steel. White had assigned this task to employees who were members of the Iron Workers. When White refused to accede to the Engineers' demands, the union insisted that both White and the general contractor, Burns and Roe, sign contracts giving it jurisdiction over all power equipment jobs. When they declined, the Engineers employed by the three subcontractors, White, Chicago Bridge, and Poirer left their jobs. Intermittent strikes followed, some involving all of the operating engineers on the project.

The NLRB trial examiner found a violation of Section 8(b)(4)(D) but not of Subsection (B). He was reversed by the Board on his finding on Subsection (B). The U. S. Court of Appeals for the 3rd Circuit overruled the Board, and, in effect, restored the trial examiner's decision, *NLRB* v. *Local 825 International Union Operating Engineers, et al.*, 410 F2d 5 (1969).

V. SUMMARY OF ARGUMENT

In its argument *Amicus* contends, contrary to the Third Circuit, that the phrase in Section 8(b)(4)(B) "doing business" should not be narrowly interpreted. In the light of the legislative history of the National Labor-Management Relations Act, and in the more than two decades of court and NLRB decisions, this type of dis-

ruption of a business relationship or even a partial discontinuance of business always has been considered a violation of Section 8(b)(4)(B).

To accept the new, novel and naive view of the Third Circuit would create a gaping "loophole" in the attempt by Congress in 1947 and again in 1959 to make illegal all secondary boycotts. It would mean judicial approval of hit-and-run secondary boycotts and work stoppages, and introduce a guerrilla-type labor-management warware. Union agents could legally coerce a key employee to stop work while other unionized employees would stand by claiming they were ready to continue "doing business". The subcontractor and his employees, whether claiming they were ready to continue "doing business" union or non-union, would have no relief from the on-and-off again "quickie" strike or boycott.

The Third Circuit Court of Appeals concedes its views might permit union action "however objectionable or deserving of condemnation" but says that this is again a problem for Congress. It is the view of *Amicus* that Congress already has prohibited union threats and coercion that lead to work stoppages against neutral parties. Acceptance of the Third Circuit's holding would be a distorted and erroneous interpretation of 20 years of *stare decisis* by other U.S. Circuit Courts of Appeal, and the National Labor Relations Board.

VI. ARGUMENT

1. Legislative History.

The 1947 amendments to the National Labor-Management Relations Act, 61 Stat. 136, 73 Stat. 519, 29 USC 151, contain 13 definitions in Section 2 but none on the term "doing business," indicating that the phrase was of such common understanding that no thought was given to a possible new interpretation 22 years hence. A review of the legislative history of the secondary boycott prohibi-

tions, especially Section 8(b)(4)(A) and (B), shows that the intent of Congress was to put an end to coercive pressure, threats, and work stoppages against secondary employers and employees. The often-quoted remarks of Senator Taft of April 29, 1947, in a colloquy with Senator Pepper covers this point. Senator Taft said:

> "It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our Committee heard evidence for weeks and never succeeded in having anyone tell us any difference between different kinds of secondary boycotts. So we have so broadened the provision dealing with secondary boycotts as to make them an unfair labor practice."

The purpose of Section 8(b)(4) was to prevent the spread of labor disputes so as not to involve innocent third persons—employees or employers. This theme is found throughout the congressional debates, reports, and legislation. The purpose of Congress was to outlaw all secondary boycotts; even opponents to this broad purpose recognized it.

Rep. John F. Kennedy in his supplementary minority report No. 245 of the 80th Congress on H.R. 3020 wrote:

> ". . . The bill is seriously defective in that it fails to make a distinction between the various types of jurisdictional and sympathy strikes and secondary boycotts. The bill in broad terms condemns all of these as unlawful activities . . ."[1]

Senator Murray, who also opposed the Taft-Hartley bill, explained he and President Truman were opposed to secondary boycotts when used to further jurisdictional strikes, but that they would not oppose all secondary boycotts.[2] When President Truman later vetoed the bill,

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[1] Legislative History Labor Management Relations Act, 1947, page 428.

[2] Legislative History Labor Management Relations Act, 1947, page 1947; *Congressional Record* April 25, 1947, page 4155.

Senator Ball quoted from the President's veto message, saying the bill would permit "employers to halt every type of secondary boycott, not merely those for justifiable purposes".[3]

The President's veto made no mention of the objectives of secondary boycotts.

Senator Morse offered his own bill, S.858, as an alternative to Senator Taft's measure. In explaining it, he said it would create a union unfair labor practice to encourage "concerted refusal to . . . *perform any services*, in the course of their employment (A) because particular work tasks of such employer or any other employer are performed by employees who are or are not members of a particular labor organization."[4] (Emphasis supplied)

Senator Morse, an acknowledged expert on labor law, was not concerned with the objective to cease doing business but concerned about concerted refusals to perform any services.

A few moments earlier on the same day, Senator Morse declared:

> "Secondly, I have attempted to define as an unfair labor practice certain types of strikes, jurisdictional disputes, and secondary boycotts. . . . For example, it would be an unfair labor practice to strike or boycott in furtherance of a jurisdictional dispute regarding the performance of a particular dispute regarding the performance of a particular work task by members of one union or another."[5]

Nowhere is there a qualification that the secondary boycott is beyond the law if only a disruption in business

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[3] Legislative Hist. L-M. Relations Act, 1947, page 1640; *Congressional Record* June 23, 1947, page 7683.

[4] Leg. Hist. L-M Relations Act, 1947, p. 986; *Congressional Record* March 10, 1947, p. 1912.

[5] Leg. Hist. L-M Relations Act, 1947, p. 981; *Congressional Record* March 10, 1947, page 1910.

occurs, if less business occurs, or if a complete cessation of business is not achieved.

Senate Report No. 105 on S.1126, the Senate's bill to amend the law, is particularly significant because it specifically cites a type of secondary boycott example that would be made illegal. Explaining its anti-secondary boycott Section 8(b)(4) the report reads:

> "Under Paragraph (A) strikes or boycotts, or attempts to induce or encourage such action, are made violations of the act if the purpose is to force an employer or other person to cease using . . . the products of another, or to cease doing business with any other person. . . . This paragraph (A) also makes it an unfair labor practice for a union to engage in the type of secondary boycott that has been conducted in New York City by Local No. 3 of the IBEW, whereby electricians have refused to install electrical products of manufacturers employing electricians who are members of some labor organization other than Local No. 3." [6]

The significance here is that the IBEW Local No. 3 secondary boycott was not intended to make an electrical subcontractor in New York *stop doing all business* with a general contractor or another electrical subcontractor. Local No. 3's boycott was only to refuse to install certain electrical products brought onto the construction site. They would continue to do other work, but not perform the business of installing certain electrical equipment not assembled by their particular local. Thus the objective was one of a partial stoppage of business. The Senate in its report on the Taft bill clearly showed this type of work stoppage was to be outlawed.

The requirement that the secondary boycott prohibitions be construed broadly is also seen in House Minority Report No. 245 on H.R.3020 April 11, 1947. It points out:

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[6] Sen. Report 105, 80th Congress, 1st Session; Leg. Hist. L-M Relations Act, 1947, p. 428.

> "Section 2(14) *defines the term 'illegal boycott' in extremely broad terms,* to include any refusal to render services when an object of the refusal or threat is to force a person to do business or to cease doing business with another person . . ." (Emphasis supplied)

In the facts in this case before the Court, Local 825 of the Operating Engineers in New Jersey refused to render a service in order to force the general contractor to compel subcontractor White to do business or employ their union members rather than Iron Workers.

Amicus contends that the legislative history of both the 1947 and 1959 amendments to National Labor-Management Relations Act dealing with secondary boycotts clearly shows that narrow interpretations and construction such as applied by the Third Circuit herein were not intended by Congress.

The Supreme Court recognized this purpose in its first interpretation of the term "doing business" in its 1951 Denver Building Trades decision, *NLRB* v. *Denver Building & Construction Trades Council*, 341 U.S. 675 @ 692. This court explained that the purpose of Congress was to narrow the area of industrial conflict by shielding "unoffending employers and others from pressures in controversies not their own."

The language of the 1947 amendments follows:

> "Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> "(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:
>
> (A) forcing or requiring any employer or self-employed person to join any labor or employer or-

ganization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; . . . ."

The language of the 1959 amendments:

"Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—

"(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is . . . . (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person. . . ."

2. Work Stoppages.

The facts brought out in the NLRB hearing in the instant case illustrate work stoppages against White and the Oyster Creek project to be of major proportions—running over a 2½ month period and including sabotage of equipment, physical force to prevent the operation of the electric welding machines, and the refusal to work on other construction tasks in an effort to shut down as much of the project as possible. To characterize the events as a mere disruption of business and hold that the objective was not to "stop doing business" illustrates a lack of construction site reality and experience in the techniques of organized labor to win their demands.

Testimony at the NLRB hearing revealed that crane operators who were members of Local 825 of the Operating Engineers left their posts September 30, but returned the following day. From October 7 to 11, they were off again. On November 4 and 5 Operating Engineers employed by White physically massed around the electric welding machines to prevent them their operation. On November 17 White's engineers quit again on the pretext that an insufficient number of employees were used to operate recently installed electric pumps. Evidence showed that the strikers admitted their work stoppage was because White was using the electric welding machines without an Operating Engineer union member to push the start-and-stop button. There was testimony that on November 17 the welding machines were damaged as a result of sabotage. The engineers remained off their jobs until December 21 and 22. Surely by any reasonable standard or interpretation such conduct fits within the meaning of not "doing business."

3. Legal Interpretations of "Doing Business".

Shortly after the 1947 amendments to the National Labor Relations Act establishing for the first time union unfair labor practices, the construction unions sought to create a "loophole" in the 8(b)(4) or the secondary boycott prohibitions around the phrase "doing business". Their theory was based on the contention that subcontractors and general contractors at a construction project were not independent business firms but were really allies; that they were not doing business with one another; therefore, no violation of the secondary boycott prohibitions of the 1947 amendments.

This "ally" theory was accepted by at least two federal district courts who found no secondary boycott violation. It was later rejected, however, by the U.S. Second Circuit and again by the Supreme Court in its Denver Building Trades opinion. Although the "doing business" argument

of the late 1940s is not the theory presented here, a District Court opinion offers an understanding of what is meant by "doing business" and how the phrase should be read.

In *Douds* v. *Metropolitan Federation of Architects*, (S.D.N.Y., 1948) 75 F. Supp. 672, District Judge Rifkind wrote:

> "It is my view that the words 'or to cease doing business with any other person' have reference to that which precedes it and must be construed in connection with the question of secondary boycott. It is simply another defense or a further spelling out of the defense of what is necessary to create a secondary boycott. . . . *It means 'doing business' as we ordinarily understand it between parties* other than those to the particular contract or their allies." (Emphasis supplied).

On page 676 the court explained further that, "It is the history of the secondary boycott, therefore, that attention should be directed and it is the light of that history that the term 'doing business' should be evaluated."

Professor Archibald Cox in his 1948 textbook "Cases on Labor Law" suggested that the words "cease doing business" should not be literally construed. The Third Circuit, however, seeks to reach such a literal construction in the case herein. Professor Cox on page 298 writes:

> "The context of the words 'cease doing business' and the meaning attributed to them by the legislative history of the Act, by the Board and by the courts, require that they be construed as condemning as an unfair labor practice a secondary boycott or strike . . . . Since it is clear the 'cease doing business' clause, when read with the clause preserving the right to strike except as specifically provided, is not to be literally construed, its bounds must be sought."

He continued, emphasizing that the phrase is to be applied only to secondary action instances and not to pri-

mary labor action which is outside the bounds of the secondary boycott prohibitions.

This same broad interpretation of the phrase "doing business" was acknowledged in what is believed to be the first appellate court interpretation of it. In *IBEW Local 501* v. *NLRB*, 181 F2d 34@37 (C.A.2, 1950) Chief Judge Learned Hand offered his explanation:

"*The phrase, 'doing business', would ordinarily cover doing any business which the third party is free to discontinue.* . . . The phrase, 'cease doing business', is general and admits of no such evasion." (Emphasis supplied).

When the ally doctrine defense based around "doing business" to sanction secondary boycotts involving general and subcontractors reached the Supreme Court in Denver Building Trades, the Court's majority speaking through Justice Burton, affirmed the fact that general and subcontractors are not allies:

"The Board (NLRB) found that the relationship between Doose and Lintner and Gould and Preissner was one of 'doing business', and we find no adequate reason for upsetting that conclusion." 341 U.S. 675@690.

The same contractor relationship in the Denver case exists among the contractors in this case, and the work stoppages in Denver were of a similar nature to those in this case. The Supreme Court found a "doing business" relationship in Denver and a similar finding should be made in this case.

4. Views of Other Circuits on "Doing Business".

The Third Circuit's two decisions (1964 and 1969) creating a "doing business loophole" in the prohibitions against secondary boycotts is the product of four jurists. The view of the Third Circuit that the language of the statute to stop doing business means a complete stoppage of all business and not a partial stopping is an extreme

minority view. Five other circuits and the Labor Board all have rejected this interpretation over a 19-year period.

An excellent example is the Ninth Circuit's decision, *Retail Fruit and Vegetable Clerks Union* v. *NLRB*, 249 F2d 591@595 (1957). The facts revealed that a secondary boycott resulted following a strike and lockout after negotiations broke down between the Retail Clerks union and the Retail Grocers Association of San Francisco. The Association bargained for J. M. Long & Co. which operated Crystal Palace Market. Long also operated a variety of shops in the market, including a grocery, and it rented other shop space to independent merchants. The union contended, in part, that Long and its lessees were not "doing business" with each other; therefore, no illegal secondary boycott. The Ninth Circuit disagreed. The union took the position that the only way the lessees could stop doing business with Long was to terminate their leases and move out. The union contended that this was not the object of their picketing. The Court disagreed and noted that the evidence showed that the union also disrupted business between the lessees and their suppliers:

> "Officials of Local 1017 warned some operators of fruit and vegetable stands before the beginning of picketing to 'buy light' to protect themselves, or, so the Board contends, to reduce the amount of their business with the suppliers. . . ."

The Court found disruption of the business between the lessees and their suppliers and the disruption of business among the lessor and his lessees was sufficient to be considered within the stop doing business phrase of the statute. To be certain it was clear, the Ninth Circuit cited Judge Hand's 1950 Second Circuit opinion in *IBEW Local 501* v. *NLRB, supra:*

> "The phrase 'doing business', *would ordinarily cover doing any business* which the third party is free to

discontinue . . . The phrase 'cease doing business' is general. . . ." (Emphasis supplied).

Significance can be placed on the Fifth Circuit's 1969 decision involving general contractors and subcontractors victims of a construction site secondary boycott, *NLRB* v. *Carpenters District Council of New Orleans and Vicinity*, 407 F2d 804. The opinion was written by Judge Homer Thornberry, who was a member of Congress in 1959 when amendments to the National Labor-Management Relations Act were passed. The facts revealed that the Delta Painting Company was a painting subcontractor on the project under the general contractor, Southern Builders Inc. Delta cut six carpenters from its staff and the Carpenters union then ordered the remaining carpenters to strike. Delta then cancelled its contract with the Carpenters Union and employed union lathers to do its work. The Carpenters union then induced carpenters employed by Southern, the general contractor, to stop working. The object to force Southern to pressure Delta to rehire the carpenters. A similar situation exists in the present case because the Operating Engineers induced its members to stop working for Burns & Roe, the general contractor, and the two subcontractors, Chicago Bridge and Poirier and McClane to force White to hire push-button Operating Engineers for the welding machines.

Judge Thornberry and the Fifth Circuit reached this conclusion:

> "This case presents a classic example of secondary coercion . . . One of the union's defenses is that secondary pressure is not prohibited by the statute unless an object thereof is to force the neutral to cease doing business with the primary employer. The union argues that it never suggested to Southern that it should cease doing business with Delta and had no desire for this to happen; it simply wanted Southern to influence Delta to rehire carpenters. . . . While the statute by its literal terms does not require that

> an object of illegal secondary pressure be to force a neutral to cease doing business with a primary employer, the Board has said, and we agree, *that the objective causing a serious disruption of an existing business relationship, even though something less than a total cancellation of the business connection, is within the intendment of the statute.*" (Emphasis supplied)

A series of three additional cases from the Second Circuit from 1960 through 1965 all follow the interpretation that a partial interference with the business of the neutral third party to a labor dispute is sufficient to constitute a cessation of doing business; thus such partial interference violates the statute. Brief summaries follow:

NLRB v. *Local 294 International Brotherhood of Teamsters*, (1960), 273 F2d 696@698. The Teamsters by secondary boycott pressure sought to prevent the Industrial Molasses Corp. from employing the Bonded Trucking Co. to handle its seasonal overload of work. Bonded's drivers belonged to an independent union. The manufacturer complied and agreed to use a Teamster-organized carrier, Leaman Transportation Corp., for its overload. But when Leaman could not handle all of the extra work, the manufacturer again called on Bonded. The Teamsters' defense was that it was not stopping the manufacturer from doing all business with Bonded, just a portion of the business. The Court held:

> "Nor is it a defense to argue that Bonded received some business when Leaman could not handle all of the overflow work because complete elimination of the company under attack is not necessary."

NLRB v. *Milk Drivers & Dairy Employees Local No. 584* (1965), 341 F2d 29. The union objected to the Old Dutch Dairy Co., a member of a multi-employer bargaining unit of milk processors, opening a retail outlet. It picketed Balsam Farms, Inc., a bottler of Old Dutch's milk in order to pressure Old Dutch to close its retail

store. Although its objective was a limited one, and the union did not seek to compel Balsam Farms from stopping all business with Old Dutch, the Court found its limited objective illegal. It noted at page 12: ". . . the *object of every secondary boycott is really to cause a cessation of business* between two independent companies. . . ." (Emphasis supplied)

In *NLRB* v. *Electrical Workers, IBEW (New York Telephone Co.)* (1963), 325 F2d 561, the Second Circuit upheld the NLRB's conclusion that: "The objective of causing such a disruption of an existing business relationship, even though something less than a total cancellation of the business connection, is a 'cease doing business' object within the meaning of Section 8(b)(4)(B) of the Act."

In a 1963 decision by the Court of Appeals for the District of Columbia, the Labor Board again was upheld on the point that a partial stoppage of business is sufficient to activate the secondary boycott prohibition of the act. In this case the New York Mailers union sought to pressure three newspapers not to handle Sunday supplements enclosed with their regular Sunday editions, because the supplements were printed by a New Jersey printing company against whom the union had called a strike. *New York Mailers Union No. 6, ITU* v. *NLRB*, 316 F2d 371.

A Seventh Circuit decision of 1964 also supports the majority view that a complete cessation of business is not necessary before the act will come to the aid of secondary boycott victims. In *NLRB* v. *Milk Wagon Drivers, Local 753, IBT*, 335 F2d 326. A Chicago Teamsters Local 753 objected to Sidney Wanzer & Sons, a Chicago dairy, receiving milk from the Pure Milk Association in Wisconsin by Quality Carriers, a trucking concern whose employees belonged to a rival Teamster local. Wanzer previously used a Chicago carrier, employing eight members of Local 753 to bring its milk to Chicago, but terminated

the carrier's contract. The Seventh Circuit affirmed the NLRB finding that to accede to the union's demands would be forcing Wanzer to disrupt, to cease, a business relationship with PMA; that such a disruption would be necessary because of the union's demands. The Court displayed an experienced practical understanding of such union activities and objectives, pointing out that:

> "It follows that we must disagree with the union's contention that it has not committed an unfair labor practice because it was not asking Wanzer to cease doing business with anybody, not asking Wanzer to buy milk from anybody but PMA at any time, but only asking Wanzer to live up to its agreement. . . ."
>
> "There is no merit therefore in the uinon's contentions that it was unconcerned about Wanzer's business with PMA, that its objective was the lawful one of keeping its members in jobs, and that it was only trying to have Wanzer perform its obligation . . ."

An "in point" NLRB decision on the partial disruption of business being sufficient to find an 8(b)(4) violation is *International Ladies Garment Workers Union, Local 102, and Henry Rosenfeld, Inc. et al*, 144 NLRB No. 95; 63-2 CCH NLRB 19,964. The union applied secondary boycott pressure against a dress manufacturer to compel the manufacturer to rehire four truck drivers who lost their jobs when the dress manufacturer transferred shipping operations from New York to New Jersey. The B&Z Trucking Company handled the normal trucking of the New Jersey plant's operations, but with the transfer it also took over the former New York trucking that had been handled by the Ideal Trucking Co. The union sought only to compel B&Z to stop handling the business that its four New York drivers had. It had not want to force the manufacturer to stop all business with B&Z. The NLRB found this was demand for a partial cessation of business, but held:

"That only a partial cessation of business with B&Z was sought is immaterial for, as the Court of Appeals for the Second Circuit observed in a closely analogous situation, 'Complete elimination of the company under attack is not necessary.'" (Citing *NLRB* v. *Local 294, IBT*, 273 F2d 696).

5. Third Circuit's Minority View

The Third Circuit's first departure from the long series of decisions holding that a partial cessation of business constitutes a "stop doing business" came in 1964 in *NLRB* v. *Local 825 International Union of Operating Engineers*, 326 F2d 218, the same union in the present case. The union's secondary pressure was against a subcontractor to prevent electricians from operating power augers and winches. The Third Circuit took the view that the work stoppage was merely an incidental consequence of efforts of the Engineers union to prevent electricians from operating power equipment and to compel the subcontractor to assign the work to their union. The Court found that, "In order to do this they had to leave their jobs, but this does not mean that in doing so they sought to compel their employers to cease doing business with Nichols."

Such conclusion is a naive understanding of the objectives of secondary boycott coercion. In taking the same view again five years later in the present case against 20 years of authorities, the Third Circuit perpetuates its error.

Extended to other fields of law, a robbery would not be committed unless the gunman relieved his victim of all of his money, not merely a portion of it. Arson could not be found unless the fire caused the complete destruction of a building rather than a portion.

VI. CONCLUSION

Amicus respectfully submits to this Court that the decision of the Court of Appeals, if permitted to stand, would overturn the intent and purpose of Congress to

narrow the scope of labor disputes so as not to involve neutral third parties. The Third Circuit's view would bring an end to effective protection against union secondary boycotts and thereby thwart the intent of Congress. It also would bring to an end 20 years of Board and Court decisions forming an understanding of the phrase "doing business." In doing so, it would give a completely new labor law meaning to "doing business."

Amicus also submits to this Court that a reversal of the Third Circuit's holding would not leave unions without recourse in protecting themselves against employer unfair labor practices or in taking action to win labor disputes. A reversal would merely maintain the status quo, withdrawing (as Congress intended) secondary boycott power from the officials of organized labor.

Amicus asks that the Court reverse the Court of Appeals, and rule that under the facts of this case the conduct of the union was a violation of Section 8(b)(4)(B) of the Act; and that the case be remanded with directions to enter judgment accordingly.

Respectfully submitted,

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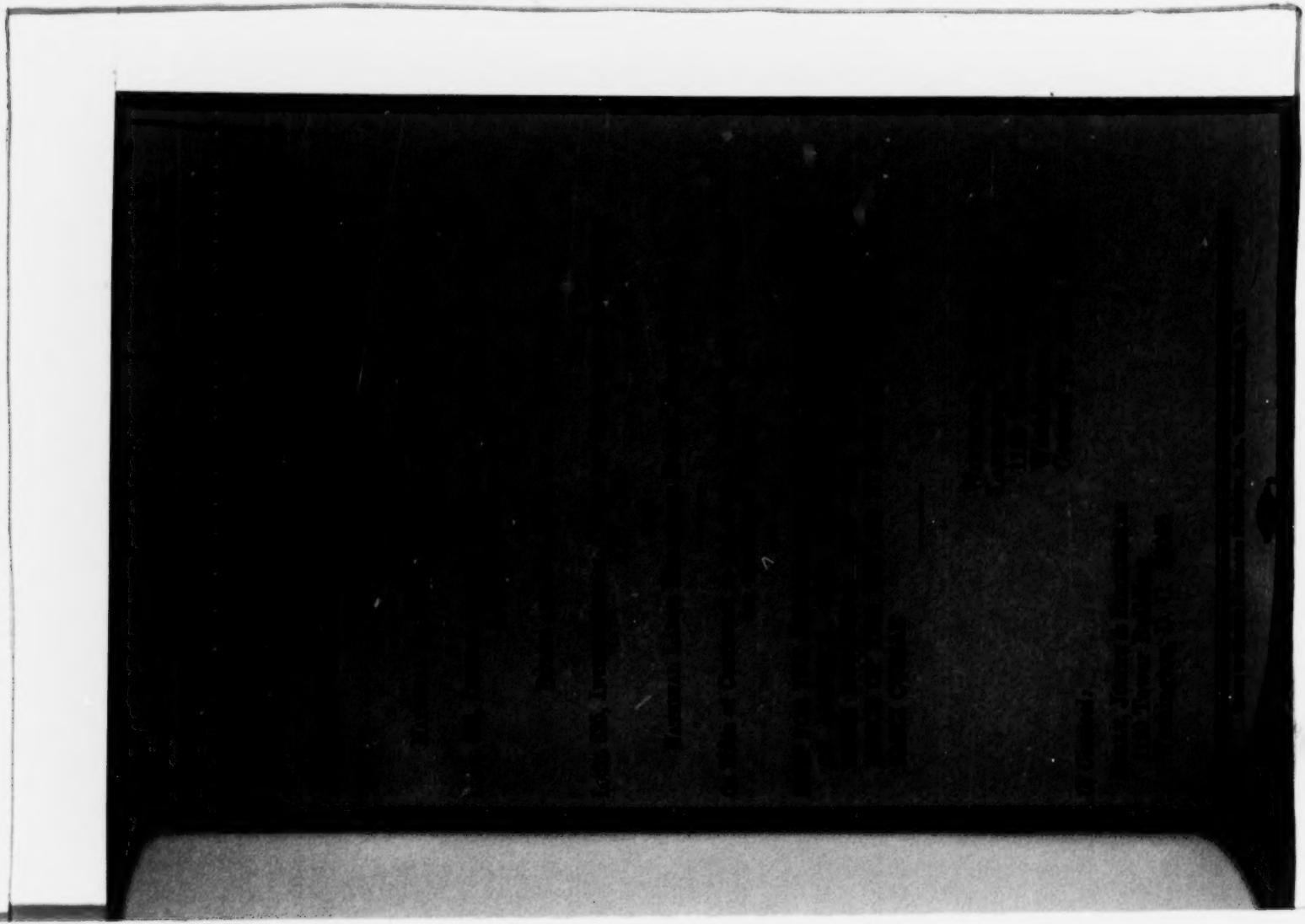
April 8, 1970



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STATUTES:

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, et seq.):

Section 8(b)(4)(B) 1, 4, 6, 7, 8, 9, 10, 11, 12, 15

MISCELLANEOUS:

H. Conf. Rept. No. 510, 80th Cong., 1st Sess., p. 43 (*Legisl. Hist. 1947*, vol. 1, p. 547) 9

Thirty-third Annual Report of the National Labor Relations Board, for the Fiscal Year Ended June 30, 1968 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

Nos. 557 and 570

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, *Respondent*

and

BURNS AND ROE, INC., ET AL., *Petitioners*

v.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

and

NATIONAL LABOR RELATIONS BOARD, *Respondents*

On Writs of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF FOR THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, THE NATIONAL ASSOCIATION OF HOME BUILDERS, AND THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AS AMICI CURIAE

This brief on behalf of The Associated General Contractors of America, The National Association of Home Builders, and The Chamber of Commerce of the United State of America, as *amici curiae,* is filed pursuant to written consent of the parties under Rule 42(2) of

the Court. It is in support of the position of petitioners in these cases, namely, the National Labor Relations Board (herein called the Board) and Burns and Roe, Inc., *et al.*, that the United States Court of Appeals for the Third Circuit in the instant matter erroneously interpreted the provisions of Section 8(b)(4)(B) of the National Labor Relations Act (herein called the Act) in respect to the cease doing business requirement of the section.

I. THE INTERESTS OF THE AMICI CURIAE IN THESE CASES

Each *amicus curiae* participating in this joint brief has a substantial, though differing, interest in the subject matter of these cases. The interest of each will be set forth below.

A. The Associated General Contractors of America

The Associated General Contractors of America (herein called the AGC) is a national association representing approximately 9,000 general construction contractors throughout the country. The general construction industry as a whole employs approximately 4,500,000 workers and annually performs contracts in the amount of about $93,000,000,000. Based on a gross national production of $953,000,000,000 for 1969, this represents over 10 percent of the national production. Members of the AGC annually perform contracts in the amount of $75,000,000,000, or approximately 80 per cent of the construction in the industry. AGC members directly employ on their own payrolls approximately 1,000,000 workers.

Almost all of the contractors which are members of the AGC are affiliated with local chapters of the AGC.

There are 130 such chapters; in jurisdiction, statewide or metropolitan area. At least one such chapter exists in each of the 50 states. In addition to the approximately 9,000 general contractors which are members of the AGC and its local chapters, there are numerous non-general contractors—contractors in the mechanical, electrical or other specialized fields—which hold associate memberships in local chapters of the AGC but are not members of the national AGC.

The general contractor customarily is responsible for the performance of all work on construction projects. The general contractor arranges and coordinates the work among the various subcontractors so that construction proceeds upon an established schedule, and plans assignments so that each subcontractor's phase of construction is performed in proper sequence with the work of the other subcontractors and with the work performed by the general contractor through its own employees. The work of the various contractors on a construction project is interdependent to the extent that frequently work by some contractors cannot be undertaken until certain other stages of construction are in process or completed by other contractors. Consequently, a work stoppage by employees of one of the subcontractors on the project, or by employees of the general contractor itself, can and often does effectively halt construction throughout an entire project.

Frequently, the general contractor on a project retains part of the construction work and subcontracts the remainder, especially those parts of the work usually performed by so-called specialty or mechanical contractors. Among the work often retained by the general contractor is the general carpentry work on a project. The building industry is highly competitive

with the project contract frequently going to the general contractor who can perform the construction at the least cost. This often means going to the general contractor less apt to experience secondary boycott strikes and similar work stoppages such as occurred in this instant case.

In addition, the general contractor's bid on a project normally includes the estimated costs of specialty or mechanical contractors who usually do, and should, submit sub-bids with the expectation that they will be permitted to complete their work without involvement in the labor disputes of the other contractors on the project.

The latest annual report of the Board (Thirty-Third Annual Report) discloses that of the 5,846 unfair labor practice charges under Section 8(b) of the Act filed against unions in Fiscal Year 1968, 1,316, or 22 percent, alleged violations of Section 8(b)(4)(B), the secondary boycott section (see Table 2, p. 203). The report further shows that 744, or over 53 percent, of the Section 8(b)(4)(B) charges filed in Fiscal 1968 involved the construction industry (Table 5, p. 209; "CC" cases). It is plain, therefore, that AGC and its members have deep concern in the judicial interpretations placed on the secondary boycott provisions of the Act.

B. The National Association of Home Builders

The interest of The National Association of Home Builders (herein called NAHB) is similar to that of the AGC.

The NAHB is a national trade association of over 51,000 members affiliated with 481 local and state associations in each of the fifty states, Puerto Rico and the Virgin Islands. Its membership annually performs

the largest share of new residential construction throughout the United States. Residential building is the largest single segment of the construction industry. As such, the impact of new residential construction is a major force in, and spreads throughout, the entire American economic structure.

The residential construction industry is the prime consumer of hundreds of thousands of construction products, equipment, materials and supplies necessary to provide housing in sufficient quantity to satisfy the needs of the American home buyers. Similarly, the industry's nature is one of high competition and flexibility. The builder in the industry to be continually successful must be able to utilize new, and sometimes revolutionary, construction processes, materials and equipment to produce housing as a product competitive with others in the market.

This industry, which last year performed new residential construction valued at over 30 billion dollars and provided close to three million jobs, is extremely sensitive to any interpretation of the secondary boycott provisions of the Act which would extend the area in which employers in the industry could be drawn into labor disputes not their own.

C. The Chamber of Commerce of the United States of America

The Chamber of Commerce of the United States of America (herein called the C of C) is an organization comprised of over 3,800 local, state and regional chambers of commerce and trade and professional associations. These groups and associations, in turn, have an underlying membership of approximately 5,000,000 business firms and individuals. In addition, the C of C

has a direct membership in excess of 37,000 corporations, firms and individuals.

Members of the C of C are engaged in a wide variety of industrial and commercial activities. In the course of their business affairs these members often have found themselves involved one way or another in what has been held to have been an unlawful secondary boycott under Section 8(b)(4)(B) of the Act. The Chamber of Commerce and its members, therefore, likewise are very much interested in the proper interpretation of the secondary boycott section of the Act.

II. SUMMARY OF ARGUMENT

In failing to discern an unlawful objective in the union's coercion of a neutral employer to compel its assistance in the union's dispute with an employer with which the neutral did business, the court below improperly gave immunity to union conduct clearly designed to involve a secondary employer in a dispute not its own. The rule of law pronounced by the court was that where, despite its coercion of a secondary employer, a union's aims could be satisfied by something other than a total and permanent cessation of business between the secondary and primary employers, the union's objective falls short of the "cease doing business" object condemned by Section 8(b)(4)(B).

In attributing so strained and inflexible meaning to the terms "cease doing business," the court below apparently lost sight of the intent of Congress in enacting that section of the Act and the evils to which that section was addressed. Congress was concerned with preventing the spread of labor disputes to innocent third parties. Hence the purpose of the pro-

hibitions of Section 8(b)(4)(B) was to protect a neutral employer from becoming the target of a boycott simply because it did business with an employer at odds with the union and thus was in a position to assist the union in bringing economic pressure to bear on that employer. In view of Congress' intention to insulate the neutral employer from coercion designed to involve it in the labor disputes of another employer, it is immaterial whether a boycott is designed to effectuate a permanent disruption of the neutral's business relation with another or a lesser disruption. In either case section 8(b)(4)(B) is violated.

Although the opinion of the court below conveys the impression that the union's objective in the case at bar was something of a rarity in labor disputes, the type of boycott in which it engaged is a commonplace occurrence, which has been uniformly condemned by the Labor Board and courts other than the Third Circuit. The union sought to compel the general contractor to persuade a subcontractor to give in to union demands. Here, as in any dispute, the union's aim was to resolve its grievances against the offending employer on terms satisfactory to the union.

In such a case, so long as the primary employer succumbs to pressures by a secondary employer which are more subtle than a total rupture of their business relationship and thereby capitulates to the union's demands, the union may well be satisfied. But the unspoken premise in bringing pressure upon the primary employer through the neutral employer is that if the primary employer is unwilling to yield to the demands of the union, the coerced neutral employer would then terminate its business dealings with that employer and deal with someone more amenable to union demands.

Indeed, had the nonunion contractor in *Denver Building Trades* given in to the union and employed union labor, there would have been no reason for the neutral, the general contractor, to stop doing business with it. Yet the union's boycott of the general contractor would still have been for an object forbidden by the statute. Inasmuch as a union boycott of a neutral employer designed to have it influence the primary employer inevitably has as *an* objective the cessation of business between the two in the event the primary employer refuses to cooperate, such conduct constitutes a violation of Section 8(b)(4)(B).

III. ARGUMENT

A. Union Coercion of a Neutral Employer in Order To Affect His Business Relationship With a Third Party Constitutes a "Cease Doing Business" Objective in Violation of Section 8(b)(4)(B).

Unless we are prepared to return to virtually unrestricted boycotting of neutrals—despite the apprehension of Congress which gave rise in 1947 to the secondary boycott proscriptions of what is now Section 8(b)(4)(B)— the decision of the Court of Appeals for the Third Circuit cannot be permitted to stand. By holding that Section 8(b)(4)(B) applies only to boycotts designed to coerce a neutral employer into a total and permanent termination of his business relationship with the primary employer, the court below has given a blank check to unions to extend the area of their economic pressures.

The boycott of Burns and Roe involved a strike by union members against a neutral, not because of any complaint regarding its labor standards, but because it was dealing with a third party, White, against whom

the union had a grievance. It constituted an attempt to compel the economic assistance of a neutral in the fray, in an effort to force White to capitulate to the union in a matter between White and the union. The objective of a temporary disruption of the business relationship between the two employers during the course of the strike, as well as the objective of having Burns and Roe substitute a more compliant contractor in the event that White refused to submit to the union's demands, both violated section 8(b)(4)(B).

The court below acknowledged that there was "proof of coercive activity amounting to 'disruption of a business relationship' " with the primary employer and that the coercive activity was "aimed at causing a neutral employer to put pressure on the primary employer." By insisting that in addition to the "disruption of a business relationship" for the purposes shown, there be proof that the union wanted the neutral employer to make a permanent termination of his business relationship, the court clearly misconstrued the purpose of Section 8(b)(4)(B) and the nature of the evils it was designed to prevent.

The secondary boycott prohibitions of the Taft-Hartley Act were intended to interdict union boycotts which were directed to neutrals who had business dealings with an employer with whom the union had a dispute. The House Conference Report accompanying the Taft-Hartley legislation, H. R. Rep. No. 510, 80th Cong., 1st. Sess. p. 43, made clear that the "cease doing business" requirement was meant to have an expansive reach:

> "Thus it was made an unfair labor practice for a union to engage in a strike against employer A for the purpose of forcing that employer to cease

> doing business with employer B. Similarly it would not be lawful for a union to boycott employer A *because* employer A uses or otherwise deals in the goods of, or *does business with* employer B." (emphasis added)

The vice in the union's conduct here, as in any unlawful secondary boycott, it is that it sought to boycott a particular neutral employer merely because he did business with an employer upon whom the union wanted to bring pressure and hence was in a position to assist the union in effectuating its aims. As this Court has stated, an objective of Congress was that of "shielding unoffending employers and others from pressures in controversies not their own," *NLRB* v. *Denver Building Trades Council,* 341 U.S. 675, 692 (1951).

Accordingly, it is the union's use of the secondary employer as a pawn in the union's dispute with the primary employer that is forbidden by the statute. Among the abuses at which Section 8(b)(4)(B) was directed, as this Court noted in a related context in the *Tree Fruits* case, *NLRB* v. *Fruit and Vegetable Packers Local 760,* 377 U.S. 58, 64 (1964), was "forcing the secondary employer to cooperate with the union in its primary dispute." In the light of this concern of Congress, the "cease doing business" language of the section was intended to proscribe union coercion directed against a neutral employer because of a second employer, *viz,* union coercion of a neutral employer designed to affect his usual method of doing business with the primary employer.

The right of a neutral employer to remain uninvolved in the union's primary dispute was recognized

by this Court in the *Sand Door* case, *Local 1976 Carpenters Union* v. *NLRB*, 357 U.S. 93, 105 (1958):

> "Such a choice, free from the prohibited pressures—whether to refuse to deal with another or to maintain normal business relations on the ground that the labor dispute is no concern of his—must as a matter of federal policy be available to the secondary employer. . . ."

As that rule of law signifies, the decision as to whether it will "maintain normal business relations"—the contractual or other arrangements that it has made with the primary employer—free of any strings attached as a result of union coercion directed against it is the secondary employer's statutory right. Consequently, where coercion is used, it is immaterial whether the secondary employer is being forced by the union to break off its dealings entirely and permanently with the primary employer or only to cease doing business with him in their customary manner temporarily. In either case it is being compelled to disrupt its normal business relations because of the boycott, and the disruption—a cessation of doing business—is continued as long as the boycott remains in effect. This Court noted in *Local 761, IUE* v. *NLRB*, 366 U.S. 667, 672 (1961), that Section 8(b)(4)(B) was "directed toward what is known as the secondary boycott whose 'sanctions bear, not upon the employer who alone is a party to the dispute, but upon some third party who has no concern in it'." By striking Burns and Roe the union plainly forced a labor dispute upon a third party who had a right to remain unconcerned and uninvolved.

B. Where, in the Absence of Compliance by the Primary Employer With the Union's Demands, the Union's Objective May Be Met by the Substitution of a Compliant Employer, The "Cease Doing Business" Object Is Satisfied.

Implicit in the lower court's decision is the notion that the union efforts in the instant case were an isolated kind of activity which, so the argument runs, managed to escape the attention of Congress when the secondary boycott prohibitions were enacted in 1947. The court below noted,

> "The language of Section 8(b)(4)(B) is apt to prohibit the classical secondary boycott where the attempt is made to coerce the primary employer by compelling others to stop trading or otherwise dealing with him. But we think the 'cease doing business' language is not apt to cover the objective proved here, however objectionable or deserving of condemnation it may be."

Far from being a unique or unusual phenomenon, and hence an isolated evil more likely to have escaped the attention of Congress, pressures of the type exerted here on the neutral employer in an effort to persuade him to make the primary contractor accommodate union demands are commonplace. Indeed, even a cursory examination of cases arising before the Labor Board reveals that union efforts similar to those in the case at bar have plagued employers not only in construction, but in manufacturing and service industries as well.

For example, in *NLRB* v. *Carpenters District Council,* 407 F.2d 804 (C.A. 5, 1969), the Carpenters Union struck the general contractor in order to have it influence a subcontractor to rehire laid off carpenters.[1]

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[1] It is worth noting that the court there referred to the case as presenting "a classic example of secondary coercion . . ." (407 F.2d at 806).

In *NLRB* v. *Local 3, IBEW,* 325 F.2d 561 (C.A. 2, 1963), enforcing 140 NLRB 729, the IBEW threatened to strike the New York Telephone Company unless it required a general contractor at work on one of its construction projects to assign certain conduit work to its members rather than those of another union. In *New York Mailers Union No. 6, ITU* v. *NLRB,* 316 F.2d 371 (CADC, 1963), the ITU attempted to prevent several New York newspapers from honoring their contracts for Sunday supplements printed at a struck plant. In *NLRB* v. *Milk Drivers Union Local 753,* 335 F.2d 326 (C.A. 7, 1964), the union struck a dairy in an effort to have it require a nonunion trucking company which transported its milk to hire members of the union. The list of similar cases could be extend without number.

The common thread of these cases is the union's effort to capitalize upon the business relationship between the secondary and primary employers under a current contract or agreement. In failing to discern a "cease doing business" object in the union's coercion of the secondary employer, Burns and Roe, the Third Circuit—unlike the Board and the courts in the cases cited above—shut its eyes to the economic realities of the business relationship between the two employers. In each of these cases the neutral employer, by virtue of being an owner, or general contractor, or having let the contract to the primary employer, was in a dominant position with respect to the primary employer.

The union, to be sure, may be satisfied temporarily with less than a permanent termination of business dealings between the neutral and the primary employer if the primary employer, under pressure from the neutral, ultimately accedes to the union's demands.

But the unspoken premise in bringing pressure to bear on the neutral is that if the primary employer is unwilling to accede to the union's demands, the neutral employer will terminate its relationship with the primary employer and substitute someone more tractable.

The court below, in focusing on what it viewed as a limited union aim, failed to recognize that except in the rare case where a union is committed to driving an employer out of business, its objective can be satisfied by something less than a total cessation of a neutral's business relationship with the offending employer. In the case at bar, the Operating Engineers' immediate aim was to have its members work on certain machinery. In the event the primary contractor, White, remained unyielding, the union's objective could be satisfied only by the termination of White's contract and his replacement by a more willing substitute.

There is, in our view, no meaningful distinction between this case and *NLRB* v. *Denver Building and Construction Trades Council,* 341 U.S. 675 (1951). There, as here, the union's aim was to have the subcontractor's work performed by union members. When the subcontractor refused to cooperate, the general contractor was picketed. Inasmuch as the union's goal was the employment of all union labor at the construction site, there is no reason to believe that its primary objective was to drive the nonunion subcontractor off the job. Had the subcontractor replaced its employees with union members—and thereby modified its arrangement with the general contractor which theretofore had permitted the employment of nonunion labor—the objective of having the general con-

tractor terminate the contract would not have been unmasked.[2] Yet as this Court recognized, 341 U.S., at 688, "The result is that the Council's strike, in order to attain its ultimate purpose, must have included among its objects that of forcing Doose and Lintner to terminate that subcontract." The same rationale is applicable here.

It is too well established for question that work stoppages instigated by a union contravene the Act if one of the objects of such activity is proscribed by Section 8(b)(4)(B), *NLRB* v. *Local 294, Teamsters,* 273 F.2d 696, 698 (C.A. 2, 1960); that is it not necessary to find that the sole object of a strike is an illegal one, *NLRB* v. *Denver Building Trades Council,* 341 U.S. 675, 689 (1951); and that it is not a defense that other motives may also have guided the union's activity, *NLRB* v. *Wine, Liquor and Distillery Workers Union,* 178 F.2d 584, 586 (C.A. 2, 1949); *Local 636, United Association* v. *NLRB.,* 278 F.2d 858, 864-865 (CADC, 1960). Since the immediate goal of the union was to deal with a subcontractor who would assign work in accordance with the union's demand, it is apparent that *an* object of its coercion of the general contractor (even if not the immediate object) was to compel the general contractor to deal with a subcontractor amenable to the union's wishes. In the event White refused to comply, the satisfaction of the

[2] A union agent had approached Gould, the subcontractor and told him that "he did not see how the job could proceed with Gould's nonunion men on it," and thereafter notified the general contractor that "union men could not work with nonunion men" (341 U.S., at 678, 679). There is no indication that, apart from the use of nonunion labor on the project, the union had any other immediate quarrel with Gould.

union's demands plainly required the cessation of all business with him and his replacement by another contractor.

IV. CONCLUSION

Accordingly, this Court should reverse the Court of Appeals insofar as it refused to enforce the Board's Section 8(b)(4)(B) findings and order and remand the matter for the entry of an order of enforcement.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 557

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL–CIO

No. 570

BURNS AND ROE, INC., ET AL., PETITIONERS

v.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL–CIO, AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court of appeals (A. 346–355) is reported at 410 F. 2d 5. The findings, conclusions, and order of the National Labor Relations Board (A. 3–40) are reported at 162 NLRB 1617.

JURISDICTION

The judgment of the court of appeals was entered on May 29, 1969, and the Board's timely petition for rehearing and suggestion for rehearing in banc was

denied on June 12, 1969 (A. 356–358, 359). The petition for a writ of certiorari in No. 557 was filed on September 4, 1969, and that in No. 570 on September 10, 1969. The petitions were granted on February 24, 1970 (A. 360, 361). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth in the Appendix, *infra,* pp. 24–25.

QUESTION PRESENTED

Whether a union violates Section 8(b)(4)(B) of the National Labor Relations Act by exerting coercive pressure upon a neutral employer that compels such employer either (1) to induce the primary employer to change his method of doing business or (2) to cease doing business entirely with the primary employer.

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

In September 1964, Burns and Roe, Inc. (Burns) began building a nuclear power generator plant at Oyster Creek, New Jersey, for the Jersey Central Power and Light Company. Burns subcontracted all the construction work to three companies—White Construction Company (White), Chicago Bridge and Iron Company (Chicago Bridge), and Poirier and McClane Corporation (Poirier) (A. 5, 17–18; 43–44, 55). All three subcontractors employed operating engineers who were members of respondent Local 825, Interna-

tional Union of Operating Engineers, AFL–CIO, which had collective bargaining contracts with Chicago Bridge and Poirier, but not with Burns or White (A. 5, 18; 45, 56–57, 70–71, 75–77, 80).

White's obligation under the subcontract was to construct the reactor building for the nuclear power plant. When White came on the job at the beginning of September 1965,[1] it assigned the work of starting and stopping an electric welding machine to employees who were members of the Ironworkers Union (A. 5, 18; 56–57, 58–59, 83–84, 228, 341–342). When the welding machine was installed at the end of the month, representatives of Local 825 demanded that a member of that union be given the job of pushing the buttons which started and stopped the machine, and requested White to sign an agreement giving Local 825 jurisdiction over all power equipment, including electric welding machines (A. 5–6, 19–20; 56, 57–59, 105). About the same time, Local 825 requested Burns to sign a similar contract (A. 6, 20; 44–45, 152–153). When both White and Burns refused to accede to these demands, the operating engineers employed by White, Chicago Bridge, and Poirier walked off the job (A. 5, 6, 20–21; 46–47, 59–60, 77–78).

On October 6, Burns formally submitted the work assignment dispute to the National Joint Board for the Settlement of Jurisdictional Disputes (A. 22; 48–49). The same day, Local 825 threatened the employers with another work stoppage unless the contracts were signed and the disputed work transferred to that union (A.

[1] All dates hereafter are in 1965.

8, n. 8, 21–23; 47–48, 77–78, 80–81). The employers again refused and another strike involving all of the operating engineers on the project ensued; it lasted from October 7 to 11 (A. 8, n. 8; 60–61, 78, 81).

On October 20, the Joint Board notified the parties that there was no reason to disturb the assignment of the disputed work to members of the Ironworkers Union (A. 23–24; 51, 339–340). However, representatives of Local 825 made it clear to all of the employers that it did not accept the decision of the Joint Board and would cause further trouble if the work assignment were not altered (A. 24; 83–86). On November 4, when the electric welding machine was started by an ironworker, White's engineers walked off their jobs, physically surrounded the machine, and prevented it from being operated (A. 24; 60–61, 68–69, 259). The next day, the same procedure was followed (A. 24; 61, 69). On November 8, the Board's Regional Director obtained a temporary injunction from the United States District Court under Section 10(l) of the Act, restraining Local 825 from using coercive means to force a cessation of business among the employers at the jobsite or to compel White to assign the disputed work to operating engineers (A. 24–25; 62, 343–345).

On November 17, White's engineers again walked off the job, this time ostensibly because of a dispute concerning the number of employees necessary to operate a recently installed electric pump. (A. 25; 63–66, 125–126, 138). However, in a discussion between representatives of Local 825 and White before the strike, the former admitted that this walkout "was more or less because of the electric welding machine being in opera-

tion" (A. 25–26; 66). The strike lasted until December 21 or 22 (A. 26; 66).

B. THE BOARD'S CONCLUSIONS AND ORDER

In the unfair labor practice proceeding against Local 825 which ensued, the Board found that that union had violated Section 8(b)(4)(D) of the Act by inducing and encouraging individuals employed by White, Chicago Bridge, and Poirier to strike, and by coercing these employers and Burns, for the purpose of forcing White to assign work on its electrical welding machine to engineers represented by Local 825 rather than to employees represented by the Ironworkers Union (A. 7). The Board further found that by applying such economic pressure on the neutral employers—Burns, Chicago Bridge, and Poirier—Local 825 also violated Section 8(b)(4)(B) of the Act, since an additional object of the pressure was to cause "a disruption of the business relationship among the various employers at the jobsite" (A. 7–9). The Board, following its earlier decision in *Local 3, International Brotherhood of Electrical Workers,* 140 NLRB 729, enforced, 325 F. 2d 561 (C.A. 2) (see *infra,* pp. 17–18), held that "an object such as [Local 825's] herein, although something less than a total cancellation of a business relationship, constitutes a 'cease doing business' object within the meaning of this section of the Act" (A. 8–9).[3]

[3] Member Fanning dissented from the Board's Section 8(b)(4)(B) finding on the ground that the finding that a jurisdictional dispute exists, within the meaning of Section 8(b)(4)(D), renders Section 8(b)(4)(B) inoperative (A. 7, n. 7). But see *infra,* pp. 21–22.

The Board ordered Local 825 to cease and desist from the unfair labor practices found and to post an appropriate notice (A. 10–14).

C. THE DECISION OF THE COURT OF APPEALS

On the Board's petition for enforcement, the court of appeals sustained the Board's finding that Local 825 had violated Section 8(b)(4)(D) of the Act,[3] but set aside its finding of a Section 8(b)(4)(B) violation (A. 346–355). Respecting the latter, the court agreed that the record "amply justifies the conclusion that [neutral employers] were subjected to coercion in the form of threats or walkouts, or both" (A. 351). The court stated, however, that Local 825 did not seek to compel a total cessation of business between the neutrals and White, but only to "'disrupt the business relation[ship]' between Burns and White so that the [former] would try to induce [White] to comply with [the Union's] demands" (A. 351). Following its earlier decision in *National Labor Relations Board* v. *Local 825, International Union of Operating Engineers*, 326 F. 2d 218, which involved a similar situation, the court held (A. 352):

> * * * * [P]roof of coercive activity amounting to "disruption of a business relationship" and aimed at causing a neutral employer to put pressure on the primary is insufficient, without more, to establish an effort to compel the one employer to "cease doing business" with the other. The lan-

[3] The court, however, modified the portion of the Board's order remedying that violation so as "to except from its prohibition coercive action aimed at enforcement of a Joint Board decision" (A. 354; see *infra*, pp. 21–22).

guage of section 8(b)(4)(B) is apt to prohibit the classical secondary boycott where the attempt is made to coerce the primary employer by compelling others to stop trading or dealing with him.

But we think the "cease doing business" language is not apt to cover the objective proved here, however objectionable or deserving of condemnation it may be * * *. We think it is for Congress to broaden the language of section 8(b)(4)(B) if it desires to cover such situations as this.

SUMMARY OF ARGUMENT

The Union's strike conduct, which sought to enroll neutral employers in a dispute not their own, was "secondary boycott" activity within reach of the objectives of Section 8(b)(4)(B). This Court has several times recognized, after extensive consideration of the applicable legislative history, that Congress' purpose in enacting this provision was to narrow the area of industrial conflict by shielding "unoffending employers and others from pressures in controversies not their own." *National Labor Relations Board* v. *Denver Bldg. Council,* 341 U.S. 675; *National Woodwork Mfrs. Ass'n* v. *National Labor Relations Board,* 386 U.S. 612, 626, 651. In this case the Union's only dispute was with White, for he was solely responsible for the work assignments regarding the welding machine. In striking Burns, Chicago Bridge, and Poirier, Local 825 was seeking to embroil them in a dispute which was not theirs, and as to which they were powerless themselves to grant any relief. Such conduct has all the hallmarks of that which led to the enactment of what is now Section 8(b)(4)(B).

The Union's strike conduct readily meets the requirement of that section that "an object" of the forbidden conduct be to force or require neutrals "to cease doing business" with the primary employer. It is firmly established that the "cease doing business" object need not be the only or even the predominant object of Union conduct to bring that conduct within the ban of Section 8(b)(4)(B). *Denver Bldg. Council, supra.* So long as the strike has no primary aspects, compare *National Woodwork Mfrs. Ass'n, supra,* it suffices that the cessation of business is one of the reasonably foreseeable consequences of a union's action. Undoubtedly it was so here, since, unless the neutrals were able to persuade White to change its job assignments, they could relieve themselves of the Union's pressure only by breaking off relations with White.

Moreover, as several courts of appeals have agreed, it is sufficient to meet the "cease doing business" aspect of Section 8(b)(4)(B) that a union seek to force the neutral employer to alter its existing method of doing business with the primary employer. In most situations where unions exert pressure on a neutral employer, they would be satisfied with a change in the operations of the primary employer, and would not in that case demand total cessation of business relations. True secondary conduct, such as was involved here, can readily be disguised behind such demands for change. Thus, to exclude such conduct from the reach of Section 8(b)(4)(B) would be substantially to nullify the broad prohibition on second-

ary conduct which was clearly Congress's purpose to enact.

Finally, Section 8(b)(4)(D) is not the exclusive remedy in this case. That section, which prohibits coercive action in jurisdictional disputes, was violated even by the Union's strike against the primary employer, White. The secondary aspects of coercive pressure employed against Burns, Chicago Bridge and Poirier had no relevance to Section 8(b)(4)(D); the latter evil is dealt with by subsection (B). To foreclose application of that subsection here would permit the application of such secondary pressure whenever a strike against the primary employer would not violate subsection (D)—for example if a union's right to the work in question had previously been established.

ARGUMENT

I. THE UNION'S STRIKE CONDUCT, WHICH SOUGHT TO EMBROIL NEUTRAL EMPLOYERS IN A DISPUTE NOT THEIR OWN, WAS "SECONDARY BOYCOTT" ACTIVITY WITHIN REACH OF THE OBJECTIVES OF SECTION 8(b)(4)(B)

Section 8(b)(4)(B) of the National Labor Relations Act makes it an unfair labor practice for a union to exert coercive pressure on a neutral or secondary employer where "an object thereof is" forcing or requiring him "to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person".[4] As this

[4] Prior to the 1959 amendments to the Act, this provision appeared as Section 8(b)(4)(A) of the Labor Management Relations Act, 1947.

Court has recognized, Congress' objective in enacting this provision was to narrow the area of industrial conflict by shielding "unoffending employers and others from pressures in controversies not their own." *National Labor Relations Board* v. *Denver Building Council*, 341 US 675, 692.

As reported by the Senate Labor Committee, Section 8(b)(4) barred strike pressure

> (1) for the purpose of forcing or requiring any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; * * * [S. 1126, as reported, 80th Cong., 1st Sess., 15, 1 Leg. Hist. of the Labor Management Relations Act, 1947 (G.P.O., 1948) 113.]

Senator Taft, one of the sponsors of the Senate Bill, described this provision as making "it unlawful to resort to a secondary boycott to injure the business of a third person who is wholly unconcerned in the disagreement between an employer and his employees." 93 Cong. Rec., 4198, 2 Leg. Hist. (1947) 1106. Senators Thomas, Murray, and Pepper, in a minority report, criticized the Senate Bill because it "ignores valid distinctions between justified and unjustified boycotts based on the objective of the union in carrying on such a boycott and the relationship of the boycotted employer to the disputing employer." S. Min. Rep. No. 105, Pt. 2, 80th Cong., 1st Sess., 20, 1 Leg. Hist. (1947) 482. They pressed this

point in the floor debates. See 93 Cong. Rec. 4035, 4197–4199, 4369, 4767, 4844–4845, 2 Leg. Hist. (1947) 1047–1048, 1104–1109, 1179–1180, 1341, 1366–1368.

In response to this criticism, Senator Taft acknowledged that his bill was in fact aimed at prohibiting all secondary boycotts; he stated (93 Cong. Rec. 4198, 2 Leg. Hist. (1947) 1106):

> * * * under the provisions of the Norris-LaGuardia Act, it became impossible to stop a secondary boycott or any other kind of a strike, no matter how unlawful it may have been at common law. All this provision of the bill does is to reverse the effect of the law as to secondary boycotts. It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between different kinds of secondary boycotts. So we have so broadened the provision dealing with secondary boycotts as to make them an unfair labor practice.

Senator Taft's secondary boycott proposal was ultimately enacted into law, with the following significant addition:

> Section 8(b)(4), relating to illegal strikes and boycotts, was amended in conference by striking out the words "for the purpose of" and inserting the clause "where an object thereof is." Obviously the intent of the conferees was to close any loophole which would prevent the Board from being blocked in giving relief against such illegal activities simply because one of the purposes of such strikes

might have been lawful. * * * [93 Cong. Rec. 6859, 2 Leg. Hist. (1947) 1623, Supplementary Analysis by Senator Taft.][5]

Thus, Congress' objective was broad, to make it "unlawful to resort to a secondary boycott" (*supra*, p. 10).[6] This Court recognized the breadth of that

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[5] Senator Murray objected to this broadening of Section 8(b)(4)(A); in his view, the proper approach would have been to "look to the primary objective of the strike rather than to all its objectives." 93 Cong. Rec. 6498, 2 Leg. Hist. (1947) 1569-1570.

[6] In 1959, Congress manifested an intent to broaden the ban against secondary boycott activity further by plugging certain "loopholes" in Section 8(b)(4)(A) (which became Section 8(b)(4)(B)), and by adding Section 8(e) which barred so-called "hot cargo" agreements. See *National Labor Relations Board* v. *Servette*, 377 U.S. 46, 51–54; *National Woodwork Mfrs. Ass'n* v. *National Labor Relations Board*, 386 U.S. 612, 633–634. In regard to defining the proscribed secondary object, the language of Section 8(e) (*infra*, p. 25) "closely tracks that of [the original] § 8(b)(4)(A)." *National Woodwork Mfrs. Ass'n*, *supra*, at 635. Section 8(e), as originally introduced, did not contain the phrase "cease doing business"; it was added on the floor of the Senate as a "general catchall" phrase whose purpose was to broaden the section's coverage. 105 Cong. Rec. 6556–6557, 2 Leg. Hist. of the Labor-Management Reporting and Disclosure Act of 1959 (G.P.O., 1959) 1162. See also *National Labor Relations Board* v. *Joint Council of Teamsters No. 38*, 338 F. 2d 23, 27 (C.A. 9): "the second prohibitory clause of section 8(e) [cease doing business] was added for the sole purpose of avoiding a possible subject-matter limitation upon the agreements prohibited."

Section 8(e) has been interpreted as proscribing not only "hot cargo" clauses which explicitly require the contracting employer to cease doing business with persons disfavored by the union, but also more subtle language which would, as a practical matter, have the same result. See, *e.g.*, *National Labor Relations Board* v. *Amalgamated Lithographers of America (Ind.)*, 309 F. 2d 31, 35–36, 41–42 (C.A. 9), certiorari denied, 372 U.S. 943;

objective when it most recently confronted the issue, *National Woodwork Mfgrs. Ass'n* v. *National Labor Relations Board,* 386 U.S. 612. While the Court divided 5–4 over the issue whether the particular conduct there involved was primary or secondary in nature, there was unanimous agreement, on a careful review of the legislative history, that the purpose of the enactment was "to protect the employer * * * from union pressures designed to involve him in disputes not his own." *Id.* at 625–626; see also 651. "The gravamen of a secondary boycott is that its sanctions bear, not upon the employer who alone is a party to the dispute, but upon some third party who has no concern in it." *International Brotherhood of Electrical Workers* v. *National Labor Relations Board,* 181 F.2d 34, 37 (C.A. 2), affirmed, 341 U.S. 694.

The conduct in this case readily fits this description. The Union's only dispute was with White, which was solely responsible for the work assignments regarding the welding machine. Burns, Chicago Bridge and Poirier were neutral employers. In striking them, Local 825 was seeking to embroil them in a dispute not their own. As in any secondary boycott, the neutrals were themselves powerless to grant the Union's ultimate demand; they could only transmit the pressure which had been applied to them by coercing White in its business relations with them, as a means

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Los Angeles Mailers Union No. 9 v. *National Labor Relations Board,* 311 F. 2d 121, 124–125 (C.A. D.C.); *Truck Drivers Union Local No. 413* v. *National Labor Relations Board,* 334 F. 2d 539, 546–547 (C.A. D.C.), certiorari denied, 379 U.S. 916.

of bringing it around. Such conduct has all the hallmarks of that which led to the enactment of what is now Section 8(b)(4)(B).

II. THE UNION'S STRIKE CONDUCT, WHICH SOUGHT TO FORCE NEUTRAL EMPLOYERS TO COERCE WHITE IN ITS HANDLING OF A LABOR DISPUTE LIMITED TO ITSELF, HAD AS "AN OBJECT" FORCING OR REQUIRING THE NEUTRALS "TO CEASE DOING BUSINESS WITH" WHITE WITHIN THE MEANING OF SECTION 8(b)(4)(B)

The crucial issue in the court of appeals was not the purpose of Section 8(b)(4)(B), which plainly includes the conduct here, but the section's language. The court of appeals believed that that language could not be given a construction which included within its ban the conduct in this case. It held that, since Local 825's expressed, immediate objective was not to compel a total cessation of business dealings between the neutrals and White, but only to compel White to change its work assignment regarding the welding machine, there was no object to force the neutrals to "cease doing business" with White. Of coure, if Local 825's conduct does not come within that language, no unfair labor practice can be found even though the purpose of the section may thereby be thwarted. 29 U.S.C. 163; *Local 1976, United Brotherhood of Carpenters and Joiners* v. *National Labor Relations Board* (*Sand Door*), 357 U.S. 93, 98; *National Labor Relations Board* v. *International Rice Milling Co.*, 341 U.S. 665. But, as we now show, the court of appeals erred. The language of Section 8(b)(4)(B) can be

interpreted comfortably to include the conduct in this case. Given the evident application of the purpose of the section, the language should be so interpreted.

A. "AN OBJECT"

Section 8(b)(4)(B) proscribes pressure on a neutral employer where "*an* object" thereof is to force or require him to "cease doing business" with the primary employer (or some other person). The language of the provision does not require that a cessation of business relations be the union's immediate objective; it is sufficient that it be "an object." *Denver Building Council, supra,* 341 U.S. at 689. Nor does the language require that a cessation of business dealings between the neutral and the primary employers be specifically intended, where that is a reasonably foreseeable consequence of the union's action. It has been recognized in other connections under the Act that "specific evidence of [a] subjective intent is 'not an indispensable element of proof of violation' * * *. 'Some conduct may by its very nature contain the implications of the required intent; the natural foreseeable consequences of certain action may warrant the inference. * * *' " *National Labor Relations Board* v. *Erie Resistor Corp.,* 373 U.S. 221, 227. See also *Radio Officers' Union* v. *National Labor Relations Board,* 347 U.S. 17, 45. So with Section 8(b)(4)(B), a union may be deemed to have, at least as one of its objectives, a purpose to force a cessation of business relations where such is a reasonably foreseeable consequence of its action.

In *Denver Building Council, supra,* this Court applied that principle in sustaining the Board's finding that a strike of the unionized employees working on a construction project to protest the presence of a non-union subcontractor (Gould & Preisner) was for such an object, notwithstanding the union's contention that its only purpose was to force the general contractor (Doose & Lintner) to make the project an all-union job. As the Court explained: "The non-union employees were employees of Gould & Preisner. The only way that respondents could attain their purpose was to force Gould & Preisner itself off the job. This, in turn, could be done only through Doose & Lintner's termination of Gould & Preisner's subcontract. The result is that the Council's strike, in order to obtain its ultimate purpose, must have included among its objects that of forcing Doose & Lintner to terminate that subcontract." 341 U.S. at 688.

The same principle applies here. It does not appear that Local 825 explicitly demanded that neutral employer Burns break off business relations with White, and that the other neutrals break off relations with Burns, if White refused to use members of Local 825 on the welding machine. But this was the only alternative the neutrals had if White continued to refuse the Union's demand. Accordingly, although Local 825 may not have specifically intended to cause a total disruption of business relations, this was nonetheless a reasonably foreseeable consequence of its pressure on the neutral employers.

B. "CEASE DOING BUSINESS"

The court of appeals concluded that *total* severance by the neutral of its business connections with the primary employer must be a union object. As we have just shown, such a purpose may in fact be ascribed to the Union in this case as an alternative to its stated goal of securing a change in working conditions. But in any event, we believe it is sufficient to satisfy the "cease doing business" aspect of Section 8(b)(4)(B) that the union seek to force the neutral to alter its existing method of doing business with the primary employer.[7]

At the very least, Local 825 intended by its pressure to require Burns to superimpose on its existing agreement with White an added condition of performance—that the work on the welding machine had to be done by members of Local 825. Acceptance of this condition by Burns would have required it to cease doing business with White on the basis of their original arrangement. As the Board stated in analogous circumstances:

> While it does not appear that Respondent [union] explicitly demanded that the Company cancel the Delee contract if Delee refused to use its members, this was the only alternative

[7] It is well to reiterate that this is not a case where the employer being pressured is not in fact a neutral, because it has some direct authority over the matter in dispute. Unlike the situation in *National Woodwork Mfgrs. Ass'n*, *supra*, there is no primary aspect to this dispute so far as Burns, Chicago Bridge and Poirier are concerned.

> the Company had if Delee continued to refuse replacement of its employees by members of Respondent. * * * [Moreover,] [e]ven assuming, *arguendo,* that Respondent did not consciously contemplate imposition of this sanction, it is nonetheless clear that Respondent sought by its threat to require that the Company superimpose upon its existing agreement with Delee an added condition of performance, that the work had to be done by Respondent's members. Acceptance of this condition by Delee would require the Company to cease doing business with Delee on the basis of their original arrangement. * * * [*Local 3, International Brotherhood of Electrical Workers,* 140 NLRB 729, 730, enforced, 325 F. 2d 561 (C.A. 2).]

An avowed effort to force a neutral to impose new working conditions on a primary employer, no less than an effort to force the neutral to sever all business connections, is exerted "for its effect elsewhere" (*National Woodwork Mfgrs. Ass'n, supra,* 386 U.S. at 632) and thus embroils the neutral in a dispute not his own. To exclude such conduct from the reach of Section 8(b)(4)(B) would substantially nullify the broad prohibition on secondary conduct which the legislative history shows Congress to have intended. For in many situations where the union exerts pressure on a neutral employer, its major aim is not to force a total cessation of business relations between the neutral and the primary employer, but to force the neutral to induce the primary employer

to change its operations as the union wishes. Only if the neutral employer cannot induce the primary employer to make the change demanded by the union, would he be faced with the necessity of having entirely to cease doing business with the primary employer.

Thus, where, as in *Denver Bldg. Council, supra,* the union brings pressure on the general contractor because it has engaged a nonunion subcontractor, the union would ordinarily be satisfied if the general contractor succeeded in getting the subcontractor to sign a contract with the union; only if the general contractor were unable to achieve this result would the union require that the subcontractor actually be removed from the job. Accordingly, by confining Section 8(b)(4)(B) to situations where the union's immediate objective is a total cancellation of the business relation between the neutral and the primary employer, the court below has immunized a large area of secondary coercion from the reach of Section 8(b)(4)(B). Moreover, it has provided an easy means of evading the sanctions of that provision; in most cases, a union could readily couch its demands in terms of what it desired from the primary employer rather than as a flat direction to the neutral employer to cease doing business with him.

Accordingly, and contrary to the court below, other courts of appeals have interpreted Section 8(b)(4)(B) as reaching the type of conduct here. In *Na-*

tional Labor Relations Board v. *Carpenters District Council of New Orleans,* 407 F. 2d 804 (C.A. 5), for example, the union had exerted coercive pressure upon the general contractor (a neutral employer) in furtherance of its effort to force the subcontractor (the primary employer) to rehire six of its members who had been replaced by members of another union. The union defended on the ground that, since it "never suggested to [the neutral] that it should cease doing business with [the primary] and had no desire for this to happen," Section 8(b)(4)(B) did not apply. 407 F. 2d at 806. The Fifth Circuit rejected this contention, stating that "the objective of causing a serious disruption of an existing business relationship, even though something less than a total cancellation of the business connection, is within the intendment of the statute." *Ibid.* See also *National Labor Relations Board* v. *Local 3, International Brotherhood of Electrical Workers,* 325 F. 2d 561 (C.A. 2), enforcing 140 NLRB 729; *National Labor Relations Board* v. *Milk Wagon Drivers' Union, Local 753,* 335 F. 2d 326, 328–329 (C.A. 7); *New York Mailers' Union No. 6* v. *National Labor Relations Board,* 316 F. 2d 371 (C.A. D.C.), enforcing, 136 NLRB 196, 197–198; *Alpert* v. *Local 1066, International Longshoremen's Ass'n,* 166 F. Supp. 22, 25 (D. Mass.); but cf. *Retail Clerks Union Local 770* v. *National Labor Relations Board,* 296 F. 2d 368 (C.A. D.C.).

III. SECTION 8(b)(4)(D) IS NOT AN EXCLUSIVE REMEDY FOR SECONDARY PRESSURE AIMED AT EMBROILING A NEUTRAL IN A JURISDICTIONAL DISPUTE OVER THE WORK ASSIGNMENTS MADE BY THE PRIMARY EMPLOYER

The contention may be made that Section 8(b)(4)(D) provides the exclusive remedy for the conduct alleged in this case. That section bars strikes and other coercive pressure against "any person" for an object of "forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than employees in another labor organization or in another trade, craft, or class."

That section applies to the conduct in this case; however, as the Board and the court of appeals agreed, it applies primarily to the strike against White itself. Even had there been no pressure against the neutrals in this case, Section 8(b)(4)(D) would have been violated. Although in that case, too, Congress' purpose was to protect an employer from being trapped in the center of a controversy in which he played no role, *National Woodwork Mfgrs. Ass'n, supra,* 386 U.S. at 625, the involvement of outside employers is not a necessary element of the Section 8(b)(4)(D) offense; it is not part of the basic evil which Congress was trying to reach with that section. The involvement of outside, neutral employers is dealt with directly by Section 8(b)(4)(B). In cases like this one, where both evils are present, there is no obstacle to application of both statutory sections.

There are other reasons why Section 8(b)(4)(B) should also apply. The charge filed may allege only that the conduct violates Section 8(b)(4)(B). See *National Labor Relations Board* v. *Carpenters District Council of New Orleans, supra.* If the union's right to the work in question were established by the Board in a proceeding under Section 10(k) or by a tribunal agreed upon by the parties, such as the Joint Board for the Settlement of Jurisdictional Disputes in the Construction Industry, coercive pressure to enforce that award against the primary employer would not violate Section 8(b)(4)(D).[8] But it does not follow that the union may extend that coercive pressure to neutral employers. Indeed, the congressional purpose was to avoid involving the neutrals in such a dispute. Such an involvement can be prevented only by reaching it under Section 8(b)(4)(B). See *Local No. 5, United Ass'n of Journeymen* v. *National Labor Relations Board,* 321 F. 2d 366, 371 (C.A. D.C.), certiorari denied, 375 U.S. 921.

CONCLUSION

For the reasons stated, the judgment of the court of appeals should be reversed insofar as it denies enforcement of the Section 8(b)(4)(B) portion of the

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[8] Section 8(b)(4)(D) contains an express exception for situations where the "employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work * * *." The court below expressly incorporated this exception in the portion of the Board's order relating to the 8(b)(4)(D) violation (see n. 3, *supra*).

Board's order, and the case should be remanded to that court with directions to enforce that portion of the order.

Respectfully submitted.

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APRIL 1970.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are as follows:

Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise, handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

* * * * *

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing; strike or primary picketing;

* * * * *

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular

trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: * * *

* * * * *

8(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void: * * *.

* * * * *

Sec. 10(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

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No. ~~670~~ 42

BURNS AND ROE, INC., and
WHITE CONSTRUCTION COMPANY,

Petitioners,

vs.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, and NATIONAL LABOR RELATIONS BOARD,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR PETITIONERS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 570

BURNS AND ROE, INC., and
WHITE CONSTRUCTION COMPANY,

Petitioners,

vs.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, and NATIONAL LABOR RELATIONS BOARD,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR PETITIONERS, BURNS AND ROE, INC., AND WHITE CONSTRUCTION COMPANY

The Opinions Below

The opinion of the court of appeals (A. 346-355)* is reported at 410 F. 2d 5. The findings, conclusions and order

* References are to the Appendix jointly filed in Nos. 557 and 570, except where otherwise indicated.

of the National Labor Relations Board (A. 3-14) are reported at 162 NLRB 1617.

Jurisdiction

The judgment of the court of appeals was entered on May 29, 1969 (A. 356-358).

An order of the court of appeals denying the petition of the National Labor Relations Board for a rehearing was entered on June 12, 1969 (A. 359).

The petition for a writ of certiorari herein was filed on September 10, 1969. It was granted on February 4, 1970 and consolidated with *National Labor Relations Board* v. *Local 825,* etc. (No. 557) (A. 360-361).

The jurisdiction of this Court rests on 28 U.S.C. 1254 (1).

Statute Involved

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. sec. 151 *et seq.*) are set forth in the Supplemental Appendix, *infra,* page 1a.

Questions Presented

The court of appeals refused to enforce the secondary boycott portion of the Board's order and held that ". . . proof of coercive activity amounting to 'disruption of a business relationship' and aimed at causing a neutral employer to put pressure on a primary employer is insufficient, without more, to establish an effort to compel one employer to 'cease doing business' with the other . . ." within the meaning of the statute (A. 352).

The questions presented are:

1. Does proof of coercive activity against a neutral employer that causes a disruption of business between

the neutral employer and others establish a "cease doing business object" within the meaning of Section 8(b)(4)(B) of the Act or must it be shown that a union's object is to bring about a complete termination of the business relationship between the neutral employer and the primary employer?

2. Did the court of appeals err in failing to find as the Board did, that Respondent had a "cease doing business object" within the meaning of the Act?

Statement of the Case

This case arises from a decision of the court of appeals refusing to enforce that portion of a Board order finding that Respondent, Local 825, International Union of Operating Engineers, AFL-CIO, violated Section 8(b) (4) (i) and (ii) (B) of the Act (A. 346-355).

Burns and Roe, Inc. (hereinafter called "Burns") a general contractor, was engaged to construct a $68 million dollar nuclear power generating plant for Jersey Central Power and Light Company, a public utility, at Oyster Creek, Forked River, New Jersey (A. 5, 17, 44). White Construction (hereinafter called "White"), Chicago Bridge & Iron (hereinafter called "Chicago Bridge") and Poirier & McLane (hereinafter called "Poirier") were all subcontractors of Burns at the project (A. 5). It should be noted that Burns subcontracted all of its work and employed no direct labor (A. 5). White employed Ironworkers to do certain welding work at the site and Respondent demanded that operating engineers be employed instead (A. 5-7). White refused and there followed threats by Respondent against Burns and threats and actual work stoppages against Poirier and Chicago Bridge, all with an object, found the Board, of bringing about a cessation of business within the meaning of the Act, between Burns and White (A. 5, 7, 8-9, 10).

The court of appeals held that the object of Respondent was not to bring about a termination of the business relationship between Burns and White, but merely to coerce Burns so that Burns would put pressure upon White to succumb to Respondent's demands (A. 351). Such an object, said the Court, i.e., disruption and stoppages short of a complete and total termination of the business relationship, "however objectionable or deserving of condemnation it may be, falls short of the 'cease doing business' object proscribed by the Act." (A. 352).

In its decision, the court below cited for comparison the decision of the Fifth Circuit in *N.L.R.B.* v. *Carpenters District Council of New Orleans and Vicinity, AFL-CIO,* (No. 25408) decided February 19, 1969 and reported at 407 F. 2d 804. In that case the Fifth Circuit applied the traditional N.L.R.B. interpretation that proscribed conduct which has as an object a disruption of the business relationship, even though something less than a total cancellation of the business connection, is a "cease doing business" object within the meaning of the Act. Thus, these two circuits are in direct conflict.

The essential facts as found by the N.L.R.B. and adopted by the Circuit Court in this case are as follows:

In September, 1964, Burns started construction of a $68 million dollar nuclear power generating plant at Oyster Creek, Forked River, New Jersey for the Jersey Central Power and Light Company (A. 5, 17, 44). As general contractor, Burns subcontracted all construction work to White, Chicago Bridge and Poirier (A. 5). Burns did not itself employ any construction workers (A. 5). All the operating engineers on the project were members of Local 825, which had collective bargaining contracts with Chicago

Bridge and Poirier but not with Burns or White[1] (A. 5, 17, 18). Burns, however, had a national agreement with the International Union of Operating Engineers, and both Burns and White were members of the Building Contractors Association of New Jersey which had contracts with Local 825 prior to 1963 and after the below noted enforcement decree (A. 5).

White came on the job in the beginning of September, 1965 and assigned the work of starting and stopping an electric welding machine to its ironworker employees who were to use the machine for welding structural steel (A. 5, 19). When the welding machine was installed at the job site during the week of September 20, Chris Gunderson, White's Construction Superintendent, was approached by Bill Bonatz, Job Steward for Local 825 and Hank Behrend, Lead Engineer for Poirier (both found by the N.L.R.B. to be agents of Local 825) (A. 5). They told Gunderson that he needed an operating engineer from Local 825 to push the buttons which started and stopped the welding machine (A. 5). Gunderson advised them that the work had been assigned to the Ironworkers (A. 5).

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[1] Burns and White were members of the Building Contractors Association of New Jersey, and it should be noted that the absence of a contract between Local 825 and the Building Contractors Association of New Jersey at this time was attributable to the matters covered in *International Union of Operating Engineers, Local 825, et als. (Building Contractors Association of New Jersey)*, 145 NLRB 952, wherein the Board found a refusal to bargain violation to have been committed by Local 825 and which was not enforced by the Third Circuit until August 5, 1966. *(N.L.R.B.* v. *International Union of Operating Engineers, Local 825, et al. (Building Contractors Association of New Jersey)* (CA 3, 1966 Civil No. 15,928, unreported). (A. 5, 17, 18) Subsequent to that enforcement decree a contract did result which applied to all Association members.

On September 30, 1965 Gunderson was again approached by Bonatz and Behrend who told him that they were going to "knock the engineers off the crane," and handed him three copies of Local 825's agreement for White to sign (A. 5, 6). This proffered contract gave Local 825 jurisdiction over all power equipment including electric welding machines and forbade subcontracting by a party to the agreement unless the subcontractor agreed to perform the work subject to all the terms of the contract (A. 6). Shortly thereafter, at about 10:00 a.m. on September 30, the engineer and oiler on the crane stopped work. They did not return until 1:00 p.m. on October 1 (A. 6).

The Union also spoke to other contractors at the job site. On September 29, Bonatz and Behrend visited Giles Willis, resident Construction Manager for Burns and told him that the members of Local 825 employed by his subcontractors had voted to cease work after October 1 unless Burns signed a contract with the Union (A. 6). The next day, Bonatz and Behrend returned with Bobby Illario, Lead Engineer for Chicago Bridge, who was also found to be an agent of Local 825 by the N.L.R.B. (A. 5, 6). Illario gave Willis copies of the same contract that had been given to Gunderson and repeated that all the operating engineers would walk off the job unless Burns signed by the following morning (A. 6).

On the same day, September 30, 1965 R. T. Daricek, Superintendent for Chicago Bridge, asked Bonatz if the rumors that there would be a work stoppage the following day were true. Bonatz replied that no engineer would work for anyone if Burns did not sign a contract with Local 825 (A. 20). When Daricek protested that Chicago Bridge had a signed contract with Local 825 and that it had no dispute with the Union, Bonatz said that all the contractors were required to sign (A. 20).

The following morning, October 1, 1965 the three Union representatives again met Willis and asked if Burns had signed the contract (A. 6). When Willis replied in the negative, they proceeded to the parking lot and engaged in conversations with the engineers who were gathered there. The engineers employed by White, Chicago Bridge and Poirier (approximately 35) then left the area and did not report for work until about 1:00 P.M. that day (A. 6, 22).

On October 6, Bonatz and Illario told Willis that unless an operating engineer was assigned to the electric welding machine, no engineers would work the following day (A. 8, 21-22). Illario who did the talking, also brought up the failure of Burns and White to sign a contract with Local 825 (A. 22). Willis informed the Union representative that Burns had a national agreement with the Operating Engineers International Union and was not required to sign local contracts, and also told them that any change in the assignment to the Ironworkers would have to be made by the Joint Board for the Settlement of Jurisdictional Disputes. The same day, Burns formally submitted the work assignment dispute to the Joint Board for the Settlement of Jurisdictional Disputes (A. 7, 22, 337).

Poirier's General Superintendent, Telghman Suffrecal, was also warned by Behrend on October 6 that his 20 engineer employees might not work the following day (A. 8, 22). In response to questioning, Bonatz told Daricek of Chicago Bridge that the engineers would not operate its machines. The operating engineers employed by White, Chicago Bridge and Poirier struck and did not report for work from October 7 until October 12th (A. 8, 21-22).

Because of this October 7th to October 12th strike, Chicago Bridge could not use their 80 employees (A. 74), White couldn't use approximately 9 (A. 60) and Poirier, within two days after the stoppage began, could not use

its 200 to 250 men on the project (A. 81). Thus, about 300 men were deprived of work, their employers of their services, and the project effectively closed down, all because of Respondent's activities.

When the engineers failed to show up on October 7, Gunderson called the main office of Local 825 and asked for replacements for the following day. Two men appeared but they insisted on checking with the operating engineers on the job before going to work. They left and did not return (A. 21).

On October 8, when the strike was in progress Bonatz told Langlinais, Project Manager for Chicago Bridge, that the work stoppage was a direct result of the welding machine assignment and the failure of Burns and White to sign contracts with Local 825 (A. 8, 22). When Langlinais protested that Chicago Bridge had a contract with the Union and that the work stoppage was costing it a lot of money, Bonatz suggested that Chicago Bridge "do what Poirer and McLane was doing, bill Burns" for the loss (A. 71).

Three days later, Behrend told Suffrecal that the engineers might be back the following day, October 12 (A. 22). Upon being questioned by Suffrecal, Behrend admitted that the Union's dispute was with Burns and White and there was no dispute with Poirier (A. 22). Poirier's and Chicago Bridge's engineers returned to work on October 12th (A. 8, 22).

Upon the foregoing facts and the entire record, the Board found that a preponderance of evidence established that Local 825, with an object to force or require White to assign the disputed work to engineers represented by the Respondent, induced or encouraged employees employed by White, Chicago Bridge and Poirier to engage

in a work stoppage on October 1, 1965 and threatened, restrained or coerced Burns and other employers, all in violation of Section 8(b) (4) (i) and (ii) (D) of the Act (A. 7). The Board also found that Local 825 was responsible for the strikes on October 1 and October 7 which violated Section 8(b) (4) (i) and (ii) (B) of the Act (A. 7).

In reaching this conclusion, the Board noted that Respondent's strikes and strike threats were in furtherance of the Respondent's primary dispute with White who refused to reassign the welding machine work to engineers represented by Respondent (A. 8). "It is equally clear," the Board stated, "that the Respondent sought to achieve the assignment of this disputed work by applying economic pressure on neutrals to the dispute—Burns, the general contractor, and subcontractors Chicago Bridge and Poirier —with an object of causing a disruption of the business relationship among the various employers at the jobsite." (A. 8). This, the Board concluded, constituted a cease doing business object within the meaning of Section 8(b) (4) (B) of the Act, "although something less than a total cancellation of the business relationship." (A. 8, 9). It found therefore that within the meaning of the Statute, an object of Respondent's conduct was "to force Burns to cease doing business with White and to force Chicago Bridge and Poirier to cease doing business with Burns in order to compel Burns to cease doing business with White" (A. 9).

As stated above, the court of appeals did not take issue with any of these facts as found by the N.L.R.B. (A. 351) but rather held that in order to establish a violation of Section 8(b) (4) (B) of the Act, nothing short of a complete cancellation of the business relationship among the neutral and primary employers involved must be proved as the union's object. Accordingly, the court refused to enforce that portion of the Board's Order finding a violation of Section 8(b) (4) (i) and (ii) (B) of the Act (A. 352, 355).

Introduction and Summary

It is the position of the petitioners that the opinion below erroneously interprets the "cease doing business" language of section 8(b)(4)(B) of the National Labor Relations Act, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.* To require proof that the Union's object is to bring about a complete termination of the business relationship between the neutral and primary employers, is contrary to well established precedent. Moreover, we further contend that under such test the Third Circuit would have us apply an evidentiary standard which would virtually require an admission by a union of such an unlawful object in order to establish a violation of the Act, as opposed to the reasonable inferences that can be drawn from its course of conduct.

The Board in the exercise of its expertise in interpreting and applying this provision of the Act over a period of 22 years has never taken such a view. Rather, it has held with the approbation of virtually every Circuit, *including the Third Circuit,* that coercion of a neutral employer by a union, even though for an object which is something less than a total cancellation of a business relationship constitutes a "cease doing business" object within the meaning of the Act.

This brief shall demonstrate that the long standing interpretation of the Board is consistent with the legislative purpose of the Act and should be upheld.

As will be shown, the latent ramifications in the circuit's decision are far reaching, particularly in the construction industry. Petitioner submits that if permitted to stand, this decision will wipe out an overwhelming body of sound precedent, reshape labor relations as heretofore understood and have a substantial adverse impact upon interstate commerce.

Accordingly, we respectfully urge this Court to reverse the decision of the court of appeals with regard to the Section 8(b)(4)(i) and (ii)(B) portions of the order of the National Labor Relations Board and direct that the order be enforced in its entirety.

POINT I

The Court of Appeals erred in holding that an object of causing the disruption of an existing business relationship, even though something less than a total cancellation of the business connection is not a "cease doing business" object within the meaning of Section 8(b) (4) (B) of the Act.

(a) The Legislative History

The fundamental question presented by this writ is whether the secondary boycott provision of the National Labor Relations Act is to continue to be interpreted in such a manner as to achieve its legislative purpose or is to be so narrowly construed as to make the effectuation of that purpose virtually impossible.

The decision below sets forth a constricted interpretation of the words "cease doing business" and, as will be discussed later, superimposes an evidentiary standard which, in the absence of an admission by a Respondent union, is virtually impossible to satisfy.

As this Court recognized in *N.L.R.B.* v. *Denver Building Trades Council*, 341 U. S. 675, 692 (1951), the object of Congress was much broader in enacting Section 8(b)(4)(B), [formerly Section 8(b)(4)(A)] of the National Labor Relations Act as amended, 29 U.S.C. Sec. 158 (b)(4)(B). As stated in that case:

> "In the views of the Board as applied to this case, we find conformity with the dual Congressional ob-

jectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressure in controversies not their own." [2]

Contrary to that view, the decision of the Third Circuit would permit pressures upon unoffending employers in controversies not their own—provided these pressures did not have as their objective a total cancellation of the business relationship between the unoffending employer and the primary employer. Thus, the court of appeals alluding to its earlier decision in *N.L.R.B.* v. *Local 825, International Union of Operating Engineers, (Nichols Electric Co.)* (CA 3, 1964, 326 F. 2d 218, stated:

"Accordingly, following our earlier decision,[3] we hold that proof of coercive activity amounting to

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[2] See also *National Woodwork Manufacturers Association* v. *N.L.R.B.*, 386 U.S. 612, 623-626 (1967).

[3] We do not view the court's decision in *N.L.R.B.* v. *Local 825, etc., (Nichols Electric Co.) supra,* as precedent for its holding herein. In that case the court did not reject the Board's "disruption" principle under the Act but rather held that when the engineers on the project employed by the various employers stopped work to surround Nichols' welding machine, that stoppage was merely an incidental consequence of their demand that Nichols assign the work to engineers and not an attempt to compel their employers to cease doing business with Nichols. Without commenting on the validity of that conclusion, we submit that in the instant case the stoppages were not incidental to any action against White. Rather, as the opinion states, ". . . the record amply justifies the conclusion that these contractors [Burns, Chicago Bridge and Poirier] were subjected to coercion in the form of threats or walkouts or both." Moreover, we contend the record here also amply justifies the Board's conclusion that the coercion found was for an unlawful object.

'disruption of a business relationship' and aimed at causing a neutral employer to put pressure on the primary employer is insufficient, without more, to establish an effort to compel the one employer to 'cease doing business' with the other. The language of section 8(b)(4)(B) is apt to prohibit the classical secondary boycott where the attempt is made to coerce the primary employer by compelling others to stop trading or otherwise dealing with him. But we think the 'cease doing business' language is not apt to cover the objective proved here, however objectionable or deserving of condemnation it may be. But cf. N.L.R.B. v. Carpenters District Council of New Orleans and Vicinity, AFL-CIO, 5th Cir., No. 25408, decided February 19, 1969. We think it is for Congress to broaden the language of section 8 (b)(4)(B) if it desires to cover such situations as this."

Sound principles of statutory construction require that to give effect to the intent of the legislature, a court must look to the object to be accomplished and the evils or mischief sought to be remedied.[4]

Congress made its "Declaration of Policy" in the very first section of the Act. That section states that the purpose of the Act is to promote the full flow of commerce by the avoidance of industrial strife which interferes with that flow. Such strife, it goes on, can be avoided or *substantially minimized* if employers, employees and labor organizations each recognize the respective rights of each

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[4] *Corpus Juris Secundum*, Volume 82, Statutes, Sec. 323 (p. 593-594).

other under law.[5] Tested by that standard, the opinion of the court of appeals is most wanting.

An examination of the legislative history of the 1947 amendments to the Act compels the conclusion that Congress was not only concerned with outlawing "classic secondary boycotts" but rather intended to eradicate the evil of all secondary boycotts that enmeshed neutral employers in disputes not their own.

This purpose is no better expressed than in the language of Senator Taft, who during the Senate debates

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[5] Section 1 reads as follows:

> SECTION 1. (a) This Act may be cited as the "Labor Management Relations Act, 1947."
>
> (b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any rights in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.
>
> It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce. (61 Stat. 136; 29 U.S.C. 141)

stated, "It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our Committee heard evidence for weeks and never succeeded in having anyone tell us any differences between different kinds of secondary boycotts. So we have so broadened the provision dealing with secondary boycotts as to make them an unfair labor practice."[6]

The broad purposes of the statute also were recognized in the Senate Minority report where the complaint was made that the statute "ignores valid distinctions between justified and unjustified boycotts based on the objective of the union in carrying on such a boycott . . . It indiscriminately bans all such boycotts whether justified or not."[7]

This, then, was the temper of Congress and the atmosphere in which this legislation was enacted. Congress clearly did not share the narrow view that the Third Circuit would now interpolate into the Statute. Rather, it saw an evil and sought to correct it.

Nowhere in the legislative history is there any indication that Congress sought to prevent only coercive activity which had as its objective a complete termination of a business relationship. Certainly, the individual members of Congress realized as have the Board and the courts that in the vast majority of cases a Union's purpose is to disrupt a business relationship in order to compel the primary employer to accede to its demands.[8] Only failing

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[6] 93 Cong. Rec. 4199 II, 1947 Legislative History 1106.

[7] Senate Minority Report No. 105, Part II, 80th Congress, 1st Session, 20, I 1947 Legislative History 182.

[8] See, *e.g.*, *N.L.R.B.* v. *Carpenters District Council*, 407 F. 2d 804, 806 (C.A. 5, 1969); *N.L.R.B.* v. *Milk Wagon Drivers' Union, Local 753*, 335 F. 2d 326, 328 (C.A. 7, 1964); *N.L.R.B.* v. *Local 3, Int'l Bro. of Electrical Workers*, 325 F. 2d 561 (C.A. 2, 1963), enf. 140 NLRB 729 (1963); *Retail Friut and Vegetable Clerks Union Local 1017* v. *N.L.R.B.*, 249 F. 2d 591, 595 (C.A. 9, 1957). See also *Alpert* v. *Local 1066, Int'l Longshoremen's Assoc.*, 166 F. Supp. 22, 25 (D.C. Mass. 1958).

that most desired end is the union's purpose served by the complete removal of the primary employer. Thus, if the opinion below is correct, are not most secondary boycotts which have been condemned in legions of cases and which conduct is certain to re-occur, free from restraint?

Let us consider the possible alternatives when work stoppages as those in the instant case occur in the construction industry. There are three:

1. The union will not work and despite this neither the neutral nor primary employer will change its position. Obviously, if everyone remains adamant, the project will never be finished. It is submitted that this is extremely unlikely and the most remote of the three alternate possibilities.

2. The second alternative is that the project will resume but the primary employer upon whom the union is trying to foist the desired condition and who refuses to comply will be removed from the project.

This latter possibility, removal of the employer with whom the union has a dispute is the second least likely alternative. On construction projects it is not a simple matter to terminate a contract and replace the employer with a new contractor. There are many factors to be considered prior to awarding a job. For example, bidding requirements must be made known and appropriate time allowed for same particularly in the case of public projects. The supply of equipment, material and personnel all must be adequately programmed, design problems and shop drawings may very well be involved, all of the foregoing requiring a substantial investment of time, effort and money.

3. The third alternative is that the pressures exerted by the union will bear fruit and force a change of conditions by the primary employer which conforms to the de-

sires of the union. Experience demonstrates that this is the most likely alternative under the circumstances.

Thus, it is submitted that when Congress addressed itself to removing impediments to the free flow of commerce it dealt with the mainstream. It did not restrict itself and devise language to deal only with very remote possibilities. Within the framework of this congressional purpose all of the legal precedent of the Board and the courts can easily be understood. To follow the interpretation now espoused by the court below would not only undermine and completely undo this legislative design but so enlarge the battlefield as to engender greater industrial strife than has existed since the inception of Taft-Hartley.

(b) The Judicial and Administrative Precedents

That a union's conduct might have various objectives was recognized by this Court early in the history of the Act in *N.L.R.B.* v. *Denver Building Trades Council, supra.* Considering the factual situation there present, this Court stated (at pp. 687-688):

> "The respondent labor organizations contend that they engaged in a primary dispute with Doose & Lintner alone, and that they sought simply to force Doose & Lintner to make the project an all-union job. If there had been no contract between Doose & Lintner and Gould & Preisner there might be substance in their contention that the dispute involved no boycott. If, for example, Doose & Lintner had been doing all the electrical work on this project through its own nonunion employees, it could have replaced them with union men and thus disposed of the dispute. However, the existence of the Gould & Preisner subcontract presented a materially different situation. The nonunion em-

ployees were employees of Gould & Preisner. The only way that respondents could attain their purpose was to force Gould & Preisner itself off the job. This, in turn, could be done only through Doose & Lintner's termination of Gould & Preisner's subcontract. The result is that the Council's strike, in order to attain its ultimate purpose, must have included *among its objects* that of forcing Doose & Lintner to terminate that subcontract. On that point the Board adopted the following finding: (Emphasis supplied)

> "'That *an* object, if not the only object of what transpired with respect to * * * Doose & Lintner was to force or require them to cease doing business with Gould & Preisner seems scarcely open to question, in view of all of the facts. And it is clear at least as to Doose & Lintner, that that purpose was achieved.' (Emphasis supplied) 82 NLRB at 1212."

It is that purpose, namely, to bring about a total or less than a total cessation of business, to destroy, disrupt or interrupt a business relationship whether as an immediate, ultimate, conditional or alternative object, express or inferred, that Congress condemned through the enactment of the Taft-Hartley Act.

Applying this criteria to the instant case, the error in the opinion below is clear. The court of appeals in its preoccupation with the idea that Respondent did not seek "to compel Burns to stop using the services of White or to terminate its contract with White " (A. 351) was concerned only with an *ultimate object.* It misses the point that there are equally unlawful objects though less than the ultimate object. Thus, when Respondent, Local 825 ordered its men off the job its *immediate object* had

to be to cause a cessation of business between Burns and White—even if only a temporary one, *i.e.* until White complied. Per force it was successful. The object was achieved. Business between White and Burns and the subcontractors did cease for the duration of the stoppages —in the last instance for 5 days when the project was brought to a complete halt. What more of a cessation is required under the Act? Must it be permanent? Of course not. No court has ever suggested that, until the Third Circuit in this case.

Let us assume for a moment, as does the Court below, that the Union's object was not to sever the relationship between Burns and White but merely to change it.[9] Realistically that could not have been its only object. Must it not necessarily be inferred that an alternate or, if you will, an ultimate object of the union was to force White off the job if he would not comply and have him replaced with someone who would? Is it not clear then that even the total rupture and cancellation of the relationship which the court of appeals deems essential to a violation was *an object* of the Union albeit not the most desired object? Just as a kidnapper's desired object is not to kill his captive, but rather to collect the ransom, it would be foolish to assume that he will not kill if the ransom is not forthcoming.

Viewed from every conceivable aspect, even those indulged by the Third Circuit, it must be found that *an* object was to cause Burns to "cease doing business" with White.

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[9] As we shall demonstrate *infra*, the Board and other courts have long held that such an object is in and of itself, proscribed by the Act.

On February 19, 1969, the Fifth Circuit issued its opinion in *N.L.R.B.* v. *Carpenters District Council of New Orleans and Vicinity*, 407 F. 2d 804, which the Third Circuit noted as being in direct conflict with its decision in this case. In the Fifth Circuit opinion (at p. 806), that court considering the same issue now before this Court stated:

> ". . . this case presents a classic example of secondary coercion: The union brought a neutral employer into its conflict with a primary employer by inducing employees of the neutral to strike and by appealing directly to the neutral's officers. One of the Union's defenses is that secondary pressure is not prohibited by the statute unless an object thereof is to force the neutral to cease doing business with the primary employer. The union argues that it never suggested to Southern that it should cease doing business with Delta and had no desire for this to happen; it simply wanted Southern to influence Delta to rehire carpenters. Concededly, the subcontracting agreement between Southern and Delta did not require Delta to use carpenters, but Respondent nevertheless argues that it was merely pressuring Southern to use its influence with Delta and that it would not have benefited in the least from a severance of relations between the two companies. While the statute [8(b)(4)(B] by its literal terms does require that an object of illegal secondary pressure be to force a neutral to cease doing business with a primary employer, the Board has said, and we agree, that the objective of causing a serious disruption of an existing business relationship, even though something less than a total cancellation of the business connection is within the intendment of the statute. Electrical Workers Union, Local 3, 1963, 140 NLRB 729 enf'd,

> 2 Cir. 1963, 325 F. 2d 561, Longshoremen's Union, Local 1066, 1962, 137 NLRB 45; *International Typographical Union,* 1962, 136 NLRB 196, enf'd, D. C. Cir. 1963, 316 F. 2d 371. In this case, the union's objective was to force Southern to add a condition to its existing subcontracting agreement with Delta, namely, that Delta use only carpenters. Stated another way, the union's objective was to force Southern to cease doing business with Delta under the existing contractual arrangement, which did not require Delta to use carpenters on the work. Secondary coercion to force a neutral to add a condition of this kind to its existing contractual arrangement with the primary employer is an illegal objective within the meaning of the statute. The necessary elements for a violation of 8(b)(4)(i) and (ii)(B) were established."

As the above quoted language of the Fifth Circuit inferentially recognizes, in many, if not most secondary boycott situations, the offending union's preferred object is not to force a total severance of business relations, but merely to so alter the conditions under which the business relationship was first entered into that the Union's demands are met. Perforce the Congressional objective of shielding unoffending employers from pressures in controversies not their own, as recognized by this Court in *N.L.R.B.* v. *Denver Building Trades Council, supra,* cannot be achieved under the Third Circuit's construction of the statute.

The opinion of the Fifth Circuit on this issue, petitioners' submit, is consistent with the overwhelming body of administrative and judicial precedent. The Board, the agency charged by Congress with a mandate to interpret and enforce the provisions of the Act, and whose exper-

tise in such interpretation has been recognized by this and other Federal courts since the enactment of the Act, has never given the language of Section 8(b)(4)(B) the narrow interpretation advanced by the Third Circuit. In the view of the Board, the Act does not require that the union have as its object a total rupture of the business relationship as held by the Court below. Rather, it has long held that coercive activity taken against an employer which has as *an object* a disruption or serious curtailment of the business relationship between that employer and another is a violation.

For example, in *Electrical Workers Union (New York Telephone Company),* 140 NLRB 729, 730 (1963), the Board stated:

> "Even assuming *arguendo* that respondent did not consciously contemplate imposition of this sanction, it is nonetheless clear that respondent sought by its threat to require that the company superimpose upon its existing agreement with Delee an added condition of performance that the work had to be done by Respondent's members. Acceptance of this condition by Delee would require the company to cease doing business with Delee on the basis of their original arrangement. The objective of causing such a disruption of an existing business relationship, even though something less than a total cancellation of the business connection, is a 'cease doing business' object within the meaning of section 8(b)(4)(B) of the Act."

The Board's finding in that case was sustained by the court of appeals for the Second Circuit, in *N.L.R.B.* v. *Electrical Workers, I.B.E.W.,* (New York Telephone Co.) 325 F. 2d 561 (1963).

In *Longshoremen's Union (National Sugar Refining Co.)*, 142 NLRB 257, 261, the Board reached the same conclusion, making specific reference to its disruption principles and its decision was subsequently *enforced by the Third Circuit.* (*N.L.R.B.* v. *Longshoremen's Union* (National Sugar Refining Co.) 332 F. 2d 559 (1964)).

The specific reference referred to in the Board's opinion reads as follows:

> "'The Board has held that a disruption of an existing business relationship, even though something less than a total cancellation of the relationship, is for a 'cease doing business' object within the meaning of Section 8(b)(4)(B) of the Act. Accordingly, we conclude that Respondents' inducement of Jarka's employees to engage in a work stoppage and threats to Jarka's officials, with an object of forcing Jarka to cease doing business with National, was violative of Section 8(b)(4)(i) and (ii)(B) of the Act.'"

Earlier that year, 1964, the *Third Circuit* again expressed its agreement with the long standing view of the Board that the disruption of a business relationship is a "cease doing business" object. *N.L.R.B.* v. *International Longshoremen's Association, AFL-CIO (Murphy, Cooke & Co.),* (CA 3, 1964) 331 F. 2d 712 (enforcing as mod. 137 NLRB 1178). In that case the union induced the employees of Murphy, Cooke & Co., a stevedoring concern to refuse to remove a cargo of frozen meat from a vessel unless employees of Murphy or members of the I.L.A. were assigned the work of transporting the meat shipside to the freezer of the consignee, Transit Freeze, work which the Harbor Commission had assigned to the Teamsters. There the Third Circuit, upon facts not dissimilar from the instant case, stated:

"The Board found that an object of respondents' conduct in inducing the strike was to effect a disruption of the business relations of all persons engaged in the transportation of meat to Transit Freeze until employees represented by ILA were employed to do the disputed work.

"It cannot be gainsaid that the Act does not prohibit all strikes. Sand Door case, (Carpenters Union v. NLRB) 357 U.S. 93, 98-99, (1958). It outlaws only those strikes whose objects are proscribed by the Act. Clearly one of the objects here, if not the only one, was to require someone to hire employees represented by ILA to do the coopering and the transporting of the meat to the door of Transit Freeze. If Murphy was without power, under the circumstances, to assign that work or without authority to perform it, then respondents' actions were proscribed by Sec. 8(b)(4)(B)."[10]

In another most significant case, *N.L.R.B.* v. *Milk Wagon Drivers Union (Pure Milk Association)*, 335 F. 2d 326, 328, (CA 7, 1964), the Seventh Circuit considered whether a Union violated the secondary boycott provisions of the Act by forcing a dairy company to disrupt an existing business relationship with a milk association because the association had engaged a hauling contractor, whose drivers did not belong to the union, to haul milk to the dairy company's plant. It should be noted that the union's contention in that case was that it had not

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[10] Cf. *N.L.R.B.* v. *Local Union No. 164 IBEW*, 388 F. 2d 105 (3rd Cir. 1968) denying enf. of 158 NLRB 838 on the ground that the struck employer's lack of control over disputed work was insufficient to establish a secondary object.

asked the employer to cease doing business with anyone. Rather, it was merely insisting that the Company have its milk transported by members of their local, whether employed by one independent contractor or the other, or by the milk company itself. Considering these facts, the Seventh Circuit stated:

> "We think the Board was justified in deciding that the Union's conduct following their demands under their 'broadened interpretation' of Article 44 constituted unfair labor practices; and that the Union threatened to, and did, strike, because Wanzer could not, or would not continue to have the eight displaced Union men drive the tank-trucks hauling the milk. The Board could also reasonably infer that to accede to the Union demands would be forcing Wanzer to disrupt, or cease, a business relationship with PMA; that the Union knew or should have known that this would be a necessary result of the demands; that accordingly the Union's conduct was unlawful under Sec. 8(b)(4)(i) and (ii)(B); and that in striking to enforce Article 44, as interpreted by it, the Union was forcing Wanzer to condition whatever means were to be used to transport the milk on employment of Local 753 members, an unfair labor practice under Sec. 8(b)(4)(i) and (ii)(A). District No. 9, Int'l Ass'n of Machinists v. N.L.R.B., 315 F. 2d 33 (D.C. Cir. 1962). We are unable to say these inferences are clearly erroneous.
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> "Neither can we say that, on those findings, the Board could not reasonably conclude that one of the objects of the Union's conduct was to force a disruption of the business relationship among Wan-

> zer, PMA and Quality. NLRB v. Denver Bldg. & Constr. Council, 341 U.S. 675, 688 (1951). *Less than a total cessation of an existing business relationship is within the meaning of 'cease doing business' in Sec. 8(b) (4) (B).* Local 3, Int'l Bhd. of Elec. Workers, 140 NLRB 729, 730 (1963), enforced 325 F. 2d 561 (2d Cir. 1963). (Emphasis supplied)
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> "The inference is warranted that the Union, virtually, exerted pressure on Wanzer to break its contract with PMA that the milk be delivered f.o.b. Chicago unless Quality's drivers were members of Local 753. It follows that we must disagree with the Union's contention that it had not committed an unfair labor practice because it was not asking Wanzer to cease doing business with anybody, not asking Wanzer to buy milk from anybody but PMA at any time, but only asking Wanzer to live up to its agreement."

Many other decisions of the Board and the circuit courts are to the same effect. For example, in *Retail Clerks Union* v. *N.L.R.B.* (Retail Fruit Dealers Association), 249 F. 2d 591 (C.A. 9 1957), the Ninth Circuit, enforcing the Board's order at 116 NLRB 856, found that an object of the Union's activity was to involve neutrals and their employees in their primary dispute with another employer and to "disrupt business relations between neutral employers and the primary employer." Such object, the Court found, was an unfair labor practice within the meaning of the secondary boycott provisions of the Act. In *N.L.R.B.* v. *Plumbers Union of Nassau County, Local 457, U.A.* (J. Bady d/b/a Bomat Plumbing and Heating) 299 F. 2d 494 (C.A. 2 1962), the Second Circuit enforcing 131 NLRB 1243, found a violation in the conduct of a Union intended

to induce the employees of neutral employers to cease work for the "forbidden purpose" of forcing the general contractor to terminate his contract with the offending subcontractor unless he would contract with the Union. Here again, the Union did not have one and only one object, namely a termination of the business relationship. A successful disruption would have equally served its purpose. See also *International Brotherhood of Electrical Workers, AFL-CIO, et als.* (Bendix Radio Division of the Bendix Corporation), 138 NLRB 993 (1962); *Local Union 825, International Union of Operating Engineers,* (Nichols Electric Company), 138 NLRB 540 (1962), enf. den. 326 F. 2d 218 (C.A. 3, 1964); *Local 1066, International Longshoremens' Association* (Wiggins *Terminals*), 137 *NLRB* 45 (1962); *New York Mailers Union No. 6, International Typographical Union (AFL-CIO)* (The Publishers' Association of New York City), 136 NLRB 196 (1962), enf. 316 F. 2d 371 (C.A. DC, 1963); *Highway Truck Drivers and Helpers, Local 107, I.B.T.,* (E. A. Gallagher and Sons), 131 NLRB 925 (1961), enfd. 302 F. 2d 897 (C.A. DC, 1962); *International Longshoremen's Association, AFL-CIO* (Board of Harbor Commissioners, Wilmington, Delaware), 137 NLRB 1178 (1962), enfd. as mod. 331 F. 2d 712 (C.A. 3 1964); *Building and Construction Trades Council* (Boston Gas Co.), 137 NLRB 1299 (1962), enfd, in *Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local 12,* 320 F. 2d 250 (C.A. 1, 1963); cf. *N.L.R.B.* v. *Brotherhood of Carpenters,* (Wendnagel and Co.) 261 F. 2d 166, (C.A. 7, 1958).

In *Alpert, etc.* v. *Local 1066, International Longshoremen's Association, Independent, et al,* 166 F. Supp. 22, 25 D.C. Mass. 1958), the district court considered a request by the Regional Director of the N.L.R.B. for a temporary injunction restraining a union which had a dispute with the

lessee of a pier over the lessee's use of the second floor of the pier for storage. The evidence revealed the inducement of employees of a shipping agent to engage in a strike in order to compel the lessee to change its storage policy. Commenting upon that factual situation the Court puts its finger upon the essence of the controversy now before this Court for determination. There the district court stated:

> "In the ordinary secondary boycott situation the persons in controversy with A, in order to put pressure on A, seek to induce B, against his will rather than by acceptable persuasion, to cease doing business with A. In the case at bar respondents' object was not the cessation of all business, but only of certain business. That does not seem a material distinction. Secondly, it might be argued that respondents were not seeking to stop business at all—that their concern was simply with how it was conducted. However, the means that they adopted was to effect an interruption of certain business relations until their demands were met. Nor do I think it an answer to say that Terminal could have put an end to the severance, at least until the third floor became filled, by acceding to respondents' demands. In most secondary boycotts the principal party with whom the union is in controversy can always end it by acceding to the demands. The present case is worse, because once the third floor became full Terminal would not even have that power."

So it is in the instant case. Surely Chicago Bridge and Poirier had no control over the work assignment by White which the Respondent Union sought to be changed. In fact, even Burns, the general contractor, had no control

over that assignment. What then was the choice with which Burns was confronted? It could continue to suffer the shutdown to its own financial detriment and that of all contractors involved, or ultimately, because of White's resistance to the Union's unlawful demands, terminate its contract with White and remove it from the project. Thus, the matter would have gone full-circle and *an* object of the Union, whether its preferred object or not, would have been achieved.

(c) Other Ramifications of the Decision

The decision of the Third Circuit in this case would also have an impact on Section 8(e) of the Act which prohibits so-called "hot cargo" clauses and uses the same "cease doing business" language as used in Section 8(b)(4)(B) of the Act. In *National Woodwork Manufacturers Association* v. *N.L.R.B.*, 386 U. S. 612, this Court stated that Sections 8(b)(4)(A), 8(b)(4)(B) and 8(e) must be construed in harmony as prohibiting various union methods of implementing the type of boycotts that Congress sought to prohibit in the Taft-Hartley Act. Clearly, such harmony does not exist in the decisions of the Third Circuit. For example, in *A. Duie Pyle, Inc.* v. *N.L.R.B.* 383 F. 2d 773, 775 (C.A. 3 1967), the Third Circuit reversed a finding by the N.L.R.B. that subcontracting provisions of a collective bargaining agreement between certain motor carriers and the Union, to the extent that they require the subcontractees to become employees of the carriers and thereby to join the union, did not violate the "hot cargo" provisions of Section 8(e). In finding a violation, the Court considered and dismissed the contention that no violation existed because the Union did not insist upon a total cessation of business provided the subcontractees be-

came members of the Union. In so holding, the Court stated:

> "At the threshold of our inquiry is the question whether the agreement requires a cessation of business with the owner-operators and fleet-owners since by its terms it would permit them to retain the work if they became employees of the carrier and joined the union. The requirement that the owner-operators and fleet-owners must become employees of the carriers prohibits a carrier by implication from doing business with those who do not become its employees and thus requires it to 'cease doing business' within the meaning of Sec. 8(e). General Teamsters', Warehousemen and Helpers Union, Local No. 890, 137 NLRB 641, 643-44 (1962). It is no answer to say that if the subcontractors become employees and join the union the carriers will not be required to cease doing business with them. While it is true that not every incidental alteration in the relationship between the parties to the subcontract would rise to the extent of constituting an agreement to cease doing business, the provisions before us are so drastic in their impact on the continued relationship of the independent subcontractees with the carriers that they fall clearly within the area regulated by Sec. 8(e)."

We fail to see any substantial distinction between the facts of that case and the instant case. Just as the Union in the *Pyle* case would have been satisfied if the subcontractees were required to join their Union, so too the Respondent here would have been satisfied if White replaced his welding machine operators with members of Local 825. In both cases the means adopted to achieve the

end were the same, a serious disruption of the business relationship, the only distinction being that in one case it was condemned by the Third Circuit as a violation of the National Labor Relations Act and in the instant case it was not.[11]

The decision of the Third Circuit in this case, we believe, would also have an adverse impact upon the "separate gate" principles enunciated by this Court in the *General Electric* case, (*Local 761, International Union of Electrical, Radio and Machine Workers, AFL-CIO* v. *National Labor Relations Board,* 366 U. S. 667 (1961). In that case the court of appeals for the District of Columbia,[12] concluded that the Board was correct in finding that the object of picketing by the Union at a gate reserved exclusively by General Electric for employees of contractors performing work unrelated to the plant's normal operations, was to encourage the independent contractor employees to engage "in a concerted refusal to perform services for their employers in order to bring pressure on General Electric." This Court agreed. Inherent in the reasoning of that decision was that picketing at such a gate could have no other purpose than to enmesh employees of neutral employers in the Union's dispute with the primary employer. So too, in most common situs cases the Board applying its *Moore Drydock*[13] standards infers a cease doing business object from the Union's conduct.

Will those decisions be clouded by the interpretation of the Third Circuit in this case? If the Third Circuit is correct, will neutral employers working at a primary site

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[11] See also *Local 107, Teamsters* (E. A. Gallagher and Sons), *supra.*

[12] 278 F. 2d 282 (CA DC).

[13] See *Sailors Union of the Pacific, AFL* (Moore Dry Dock Co.), 92 NLRB 547 (1950).

continue to be afforded this protection, or will they be subject to "disruption" of their contractual relationship with the primary employer under the guise that the Union was not seeking to terminate the business relationship but merely putting pressure upon them so that they will exert their influence on the primary employer to comply with the Union's demands.[14] Clearly, such a retreat from recent developments in the field of labor-management relations which have enforced the rights of neutral employers protected under the Act should not be eradicated.

As is evident from the foregoing the decision of the Third Circuit so vitiates the secondary boycott provisions of the Act that its ramifications may well be more extensive than originally perceived. Should not, then, the interpretation of the National Labor Relations Board in the exercise of the expertise it has developed in over 22 years under Taft-Hartley be given substantial weight? The Board, as perhaps the Third Circuit failed to do, perceives of and interprets the Act in the context of an entire body of labor law developed over the years and within the total framework of the regulatory scheme.

As this Court stated in *Republic Aviation Corp.* v. *Labor Board,* 324 U.S. 793, 800 (1945), and in *Local 761, I.U.E., et als., supra,* "One of the purposes which lead to the creation of such Boards is to have decisions based upon evidential facts under the particular statute made by experienced officials with an adequate appreciation of the complexities of the subject which is entrusted to their administration." To sustain the view of the Third Circuit in this case would, we submit, be an unfortunate departure from that principle.

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[14] In this connection will the interpretation of the Third Circuit achieve for construction unions the complete "common situs" picketing freedom they have so far been unable to achieve through their perennial efforts to amend this section of the Act. For the most recent example see HR 100, S 1371; S 1365, 91st Congress.

POINT II

The Court of Appeals erred in rejecting the finding of the Board that Respondent had a cease doing business object within the meaning of the Act.

In the opinion below the court of appeals found that the record amply justified the conclusion that Burns, Chicago Bridge and Poirier were subjected to coercion in the form of strikes and strike threats and adopted these findings of the Board (A. 351). The Court experienced no difficulty with that essential element of a violation. However, it rejected the Board's ultimate finding that such conduct had a "cease doing business" object within the meaning of the Act. Here the court seriously erred. Initially, it mistakenly concludes that "It was not the Board's theory, nor does it seem seriously to be contended that the Respondents sought to compel Burns to stop using the services of White or to terminate its contract with White." (A. 351). In commenting that such theory was not "seriously" contended, the court concedes that the Board did so urge.

In fact the Board's brief to the court below states (at pages 25-27):

> "The Board properly found that the unlawful economic pressure applied by the Union to the neutrals had an object of forcing a disruption of the business relationship among the contractors at the job site, in violation of Section 8(b)(4)(i) and (ii)(B). The Union's ultimate object of securing the disputed work would be achieved by disrupting the business relationship between the neutral subcontractors and Burns and by threatening Burns

directly, for the only means whereby the neutrals could rid themselves of this economic pressure would be to substitute another subcontractor for White or to compel White to change its work assignment. Such disruption of the existing relationships between neutrals and the primary employer (White) constitutes a 'cease doing business' object within the meaning of Section 8(b)(4)(B). Indeed, in many secondary boycott situations the offending union's preferred objective is not to force a literal and total cessation of business among employers, but rather to compel the primary employer, through threats of or actual loss of business, to submit to the union's demands. Only if the primary employer refuses to yield in the face of the secondary pressures is the union's purpose aided by the removal of the primary entirely. So here—although the Union would have been satisfied if by striking against and threatening the secondaries, White had been compelled to change its work assignment—barring such a result, a literal cessation of business would be necessary. In sum, we submit that the Board properly found that the Union violated Section 8(b)(4)(i) and (ii)(B) by engaging in strikes and threatening neutrals with an object of causing a disruption of the business relationships among the various employers at the job site."

This passage from the Board's brief clearly demonstrates that the Board *did* urge that Respondent had as *an* object the total termination of the business relationship between Burns and White. At the same time it points out that total cancellation achieves Respondent's desired end as well as does submission by the primary employer.

The underlying premise induged by the court below that a cancellation of the business relationship between Burns and White "would not have been advantageous" to the Union (A. 351), is patently in error.

Even the trial examiner, who originated the theory now advanced by the court of appeals, recognized the inherent alternate objective of a total cancellation of business.[15]

With regard to this point it should be noted that in reversing the Trial Examiner and holding that a disruption of the business relationship was sufficient to establish a violation, the Board did not negate the fact that an alternate object of total cancellation of the Burns and White contract existed. Rather, it reaffirmed its past policy of finding a violation on "something less" than a total cancellation of business.

The court of appeals apparently does not appreciate the realities of the construction industry. As is well known by anyone familiar with these matters, it is not easy to bring about the actual termination of a contractual relationship on a permanent basis between a general contractor and subcontractors, particularly on a $68,000,000.00

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[15] In his decision, the Trial Examiner states, "Local 825 never made any request upon Chicago Bridge, Poirier or White to cease doing business with Burns. Such a request," i.e. of either Chicago Bridge, Poirier or White to cease doing business with Burns, "would have been totally irrational for it would have simply forced Burns to employ such other subcontractors which, *with the possible exception of White,* would not have furthered either interests of the Respondent" (Emphasis supplied) (A. 28). Thus, it was readily apparent to the Trial Examiner as it should have been to the Circuit Court that the removal of White from the project by a termination of the contractual relationship was certainly a possibility that would have furthered the interests of Respondent.

project. While N.L.R.B. cases abound involving construction situs secondary boycott activity, few if any would disclose that contractors in the situation of White on a major project are indeed replaced. Unions, of course, know this. Indeed, they know that to be successful the pressure must be brought to bear on neutral contractors such as Chicago Bridge and Poirier with whom the Engineers were employed and, in the circumstances of this case, upon the general contractor Burns who could remove White from the job. As the Fifth Circuit observes in *N.L.R.B.* v. *Carpenters District Council of New Orleans and Vicinity, supra,* this is the classic secondary boycott coercive technique.

Thus, as stated above, while the union's preferred object may have been to force White to succumb to its demands through the coercion of those doing business on the project with White, the more remote possibility, White's total removal, was certainly not precluded. Simply stated, the Respondent wanted a massive disruption of progress at the job site until Burns or White bent to its will, and if necessary removal of White from the job.

The standard of proof expected by the circuit court to establish an unlawful object under its interpretation of the Act further compounds its error. It observed that the Union did not "admit a cease doing business object." To expect this is incredulous.

Labor relations are not a "pink tea" affair. In fact, as well put by a Trial Examiner in evaluating evidence in another secondary boycott case involving this very same Respondent, "Naivete however becoming to the young and innocent is a dispensable asset in evaluating labor disputes. It invites miscalculation". *International Union of Operating Engineers, Local 825* (United Engineers and Constructors Inc.) 138 NLRB 279, enf'd 322 F.

2d 478 (CA 3, 1963). Therefore the opinion below not only imposes an evidentiary standard virtually impossible to sustain, but it reveals a fundamental unawareness of or disregard for the sophistication with which unions now cloak unlawful objectives. Exposure to Board and Court procedures obviously teaches something.

This union in particular is no stranger to Board and Court proceedings interpreting Section 8(b)(4) of the Act. Indeed, its proclivity to violate Sections 8(b)(4)(B) and (D) of the Act is demonstrated in the following decided cases:

> I.U.O.E., Local 825 (Building Contractors Association of New Jersey), 118 NLRB 978 (1957); Local 825, I.U.O.E. (Charles Simkin & Sons, Inc.), 120 NLRB No. 111 (1958); Booth and Flinn Co., 120 NLRB No. 75 (1958); I.U.O.E., Local 825 (Fluro Electric Corp), 128 NLRB 725 (1960); I.U.O.E., Local 825 (Carleton Bros. Co.), 131 NLRB 452 (1961); I.U.O.E., Local 825 (Warren George, Inc.) (1961); I.U.O.E., Local 825 (R. G. Maupai Co.), 135 NLRB 578 (1962), enf'd 315 F. 2d 695 (C.A. 3, 1963) (involving secondary activity in order to obtain an assignment to a welding machine as in the instant matter and in which the Board made special note of Local 825's proclivity to violate the secondary boycott provisions of the Act. I.U.O.E., Local 825 (Schwerman Co. of Pa., Inc), 139 NLRB 1426 (1962); I.U.O.E., Local 825 (United Engineers and Constructors, Inc.), 138 NLRB 279 (1962), enf'd 322 F. 2d 478 (C.A. 3, 1963); I.U.O.E., Local 825 (Building Contractors Association of New Jersey), 145 NLRB 952 (1964), enf'd August 5, 1966, by consent decree in civil No. 15,928; I.U.O.E., Local 825 (Nichols Electric

Co.), 137 NLRB 1425, enf'd in part 376 F. 2d 213 (C.A. 3, 1964), adjudged in criminal contempt (C.A. 3) cert. den. 379 U.S. 934; I.U.O.E., Local 825 (Peter Weber, President and Business Manager) and Utilities Line Construction Co., Inc., 159 NLRB 131; Local 825, I.U.O.E. (American Dredging Co.), 168 NLRB No. 34 (1967), enf'd sub. nom. N.L.R.B. v. Weber, 382 F. 2d 387 (C.A. 3, 1967); Local 825, I.U.O.E. (Morin Erection Co.), 168 NLRB No. 1 (1967).

In addition, there is now outstanding a report to the Third Circuit by Special Master Albert B. Maris recommending that this Respondent be found in civil contempt in four separate instances of having violated the decrees of the Third Circuit ordering it to cease and desist from secondary boycott activity.[16]

In the instant case the Board stated (A. 9-10):

> "Having found that the Respondent has also engaged in violations of Section 8(b)(4)(B) and *because of the Respondent's demonstrated proclivity to engage in unlawful secondary activities, as noted in the Trial Examiner's Decision, we shall issue a broad cease and desist order* to prevent the Respondent from committing future violations in its disputes with White and other primary employers." (Emphasis supplied)

To expect an admission by a union, particularly the Respondent union with such a long record of violations, is incredulous.

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[16] See *N.L.R.B.* v. *Local 825, I.U.O.E., et als.* (No. 17091) and *N.L.R.B.* v. *I.U.O.E., et als.* (No. 17092).

In assessing the opinion below we must note the court's reluctance to draw any reasonable inference from the facts and its apparent belief that a conscious intent to violate the statute is required.

The Board has long held with judicial approval that intent may be inferred from all the circumstances.[17]

In *International Typographical Union,* (New York Herald Tribune, Inc.), *supra,* at page 197-198, the Board articulated the nature of the intent proscribed by the Act. There, it said:

> "The Respondent equates 'an object' as used in Section 8(b)(4)(B) with a specific intent to accomplish the action complained of. Respondent regards intent as synonymous with the *scienter* or *mens rea* of criminal violations. This is not, however, the type of intent which the Act requires to be proved. *Rather, 'in the absence of admissions by the Union of an illegal intent, the nature of the acts performed shows the intent.'* Here, Respondent told its members who were employed by the publishers not to handle struck work from Neo-Gravure with whom it had a dispute, and informed the publishers, with whom it had no dispute, that so long as they continued their existing relationship with Neo-Gravure it would work only on its own terms. The Union cannot disavow the consequences of this action by denying that it intended the publishers to cease doing business with Neo-Gravure when its own action made it impossible for the relationship between the publishers and Neo-Gravure to contin-

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[17] *International Longshoremen's Association, AFL-CIO, et als.,* and Board of Harbor Commissioners, Wilmington, Del., *supra, New York Mailers Union No. 6* (N. Y. Herald Tribune), *supra.*

> ue. The Respondent may have been concerned with other objects as well, such as adherence to its traditional policy of refusing to handle struck goods, *but its actions effectively establish that, at least, an object was to force the publishers to disrupt or seriously curtail the existing business relationship* between them and Neo-Gravure if the Union was unable to obtain its goal of recognition in any other fashion." (Emphasis supplied)

So it is that the Board (and in those circuits where the issue has been raised, with the present exception of the Third) when considering the conduct of a union, determines whether its acts manifest *an object* which is unlawful, whether it be an alternative object,[18] conditional object,[19] immediate object,[20] or ultimate object.[21]

Surely, the total withdrawal of its members from the project in a unified display of force and coercion on two occasions is ample evidence of the adamancy of the Union's stand and of its determination to achieve its end —assignment of the work. Unfortunately, it sought to achieve this end by illegal coercion and strikes against neutrals. It was totally insensitive to the deep injuries caused neutrals. It was without concern whether it achieved White's change of the work assignment

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[18] *Bangor Building Trades Council, AFL-CIO* (Davidson Construction Co., Inc., 123 NLRB 484 (1959) enf'd 278 F. 2d 287 (CA 1, 1960).

[19] *Texas Industries,* 112 NLRB 923, note 2 (1955); enf'd 234 F. 2d 296 (CA 5, 1956).

[20] *Tennessee Coal and Iron Division of United States Steel,* 127 NLRB 823 (1960), enf'd as mod. 294 F. 2d 256 (CA DC 1961).

[21] *N.L.R.B.* v. *Denver Building Trades, supra.*

by a serious disruption of the project or by White's total removal from the project. Whichever its objective, or both, we submit it was a "cease doing business" object within the intendment of the Act and therefore a violation of Section 8(b)(4)(i) and (ii)(B).

In our petition we stated that this case is one of great and recurring significance in the enforcement of the National Labor Relations Act. We have attempted herein to point out some of its adverse ramifications in all industries and particularly in the construction industry. There may indeed be more which we cannot now envision.

In an industry already afflicted with exceedingly high labor costs, limitations upon the most effective utilization of manpower and equipment, costly delays due to jurisdictional, secondary and other strikes, to give judicial sanction to conduct such as that involved in this case would be a telling blow indeed.

The court below refused to find the Respondent's conduct unlawful, even though conceding it was "objectionable and deserving of condemnation" (A. 352), and stated that it is for Congress to broaden the language of Section 8 (b)(4)(i) and (ii)(B) if it desires to cover such objectionable conduct. We reply and the overwhelming weight of authority is in accord, that Congress has already done its job.

CONCLUSION

For the reasons stated herein, it is respectfully submitted that this Court should reverse that portion of the decision of the Court of Appeals wherein it failed to find a violation of Section 8(b) (4) (i) and (ii) (B) of the National Labor Relations Act, and direct enforcement of that portion of the Board's order.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

Statute Involved

The relevant provisions of the National Labor Relations Act, as amended, (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq*) are as follows:

> Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> • • •
>
> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—
>
> • • •
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the pro-

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a

Statute I

Involved

visions of section 9: *P*

tained in this clause (B) shall be construed to make *Provided,* That nothing con-

unlawful, where not o*therwise* unlawful, any pri-

mary strike or primary picketing;

• • •

(D) forcing or requir*ing* any employer to assign particular work to emp*loyees* in a particular labor organization or in a pa*rticular* trade, craft or class rather than to employe*es* in another labor organiza-tion or in another trad*e*, craft or class, unless such employer is failing to c*onform* to an order or certi-fication of the Board *determining* the bargaining representative for empl*oyees* performing such work:

• • •

(e) It shall be an unfa*ir* labor practice for any la-bor organization and *any* employer to enter into any contract or agre*ement*, express or implied, whereby such employer *ceases* or refrains or agrees to cease or refrain fr*om* handling, using, selling, transporting or other*wise* dealing in any of the products of any other *employer*, or to cease doing business with any othe*r* person, and any contract or agreement entered *into* heretofore or hereafter containing such an agr*eement* shall be to such ex-tent unenforcible and v*oid*: • • •

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Nos. ~~557~~ 40 and ~~570~~ 42

FILED

JUN 1 1970

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO,

Respondent.

BURNS AND ROE, INC., et al.,

Petitioners,

vs.

LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, and NATIONAL LABOR RELATIONS BOARD

Respondent.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS AFL-CIO

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Statement of the Case

BACKGROUND FACTS

Burns and Roe, Inc. (Burns) was the architect-engineer and general contractor for the construction of a power generator plant at Oyster Creek, New Jersey. Burns subcontracted all construction to White Construction Co. (White), Chicago Bridge and Iron Co., (Chicago) and Poirer and McLain Corp. (Poirer). Local 825, International Union of Operating Engineers, AFL CIO (the Union) had a collective bargaining relationship with Chicago and Poirer, but did not have contractural relations with Burns and White.

A dispute arose with regard to White's assignment of Ironworkers to operate a welding machine, and work stoppages occurred at the job site by the union. Burns and White filed unfair labor practice charges with the NLRB alleging a violation of Section 8 (b) (4) (B) and (D) of the National Labor Relations Act.[1]

TRIAL EXAMINER'S FINDINGS

A hearing was conducted before NLRB Trial Examiner John Funke. He found that the Union violated Section 8 (b) (4) (D) of the Act, but with respect to the Section 8 (b) (4) (B) allegation, he held as follows (A-27-28):

> . . . "2. Violations of Section 8 (b) (4) (B)
>
> The complaint, paragraphs 7(a) and (b), alleges that the conduct of Respondent as above set forth, *supra*, had among it objects the forcing of Chicago Bridge, Porier and White to cease doing business with White. There is not a scintilla of

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[1] 61 Stat., 136 73 Stat. 519, 29, U.S.C. 151 Et. Seq. set forth in relevant part in the Supplemental Appendix *infra*.

evidence to support these allegations. On this record Respondent may be found to have two objectives, (1) to force Burns and White to agree to Local 825's contract in violation of the Board's Order in the *Building Contractors'* case, *supra*, and (2) to force White to assign the operation of the welding machine to its members. Neither objective would have been furthered by a general cessation of business among the parties. Local 825 never made any request upon Chicago Bridge, Porier or White to cease doing business with Burns. Such a request would have been totally irrational for it would have simply forced Burns to employ other subcontractors which, with the possible exception of White, would not have furthered either interest of the Respondent. But Respondent never indicated it wanted White off the job—it wanted to harass White to gain compliance with its request. Nor was any demand made upon Burns to cease doing business with White. Respondent never suggested that cancellation of the contract would have served its purpose. It did inform Burns, through persons I have found to be its agents, that the failure of Burns and White to sign contracts and the assignment of the work on the job were the sources of the dispute. All Respondent wanted was the work, not a substitution of contractors nor a termination of contractual relationships between the contractors.

The General Counsel attempts to distinguish this case from *Local 825, International Union of Operating Engineers, AFL-CIO (Nichols Electric)*, 138 NLRB 540, enfd. denied, 326 F. 2d 218 (C. A. 3), by stating "there is ample evidence to show Respondent sought these objectives." The brief, which is characterized elsewhere by specificity, give no citation of fact or testimony to support this conclusion and a search of the record reveals no testimony to support it. . . . (Footnotes Omitted)"

THE BOARD'S FINDINGS

Exceptions to the trial examiner's findings concerning the Section 8 (b) (4) (B) allegation were filed and the NLRB issued its decision (A-3-14) reported at 162 NLRB 1617. The decision of the NLRB, with member Fanning

dissenting, reversed the trial examiner and held that the union violated Section 8 (b) (4) (B).[2]

THE FINDINGS OF THE COURT

The NLRB petitioned the U.S. Court of Appeals for the Third Circuit for enforcement of its Order. The decision of the Court of Appeals is reported at 410 Fed 2nd 5 (A-346-355). The Court of Appeals, in effect, applying the criteria set forth in *Universal Camera Co.*[3] held that the record did not justify the conclusion that the Union was seeking to compel one employer to cease doing business with another employer within the meaning of Section 8 (b) (4) (B) and refused to enforce that portion of the Board Order.

In this regard, the Court stated that the question to be decided was whether the union sought to compel one contractor to cease doing business with another when it engaged in conduct with the intent that the contractor (Burn) try to induce the subcontractor (White) to comply with the Union's demands (A-351). The court went on to hold that proof of coercive activity aimed at causing a neutral employer to put pressure on the primary employer is insufficient without more to establish an effort to compel the one employer to cease doing business with the other within the purview of Section 8 (b) (4) (B) of the Act (A-352).

The Board petitioned the Court of Appeals for a rehearing which was denied (A-359). White, Burns and the Board then filed the instant petitions which were granted by this Court (A-360-361).

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[2] The Board's findings appear at pages 7 through 9 of the appendix.

[3] *NLRB v. Universal Camera Co.*, 340 U.S. 474.

Summary of Argument

It is the union's contention that the statute requires that a union to be found guilty of violating the provisions of Section 8 (b) (4) (B) engage not only in prohibited conduct but also for a prohibited objective.

The question of the union's objective is one of fact and not of law. The Appellate Court below found as a matter of fact that a proscribed objective did not exist and under well established precedent the factual determinations of the Court of Appeals cannot be disturbed by this Court.

The Union further contends that the question of illegal objective is a fact which must be found and substantiated by the entire record, and is not one which can be mechanically applied on a per se basis as a matter of law. Finally, the Union contends that since this matter involved a jurisdictional dispute under Section 8 (b) (4) (D) of the Act there cannot be any violation under Section 8 (b) (4) (B). In this connection, the Union contends that the status of contractors and subcontractors on a construction site at least as it applies to the facts of this case is not truly neutral and any conduct engaged in by the Union was primary and not prohibited by the statute.

ARGUMENT

Point I

To Find That A Union Violated Section 8 (b) (4) (B) Of The National Labor Relations Act, It Must Be Established That The Union Engaged In Proscribed Conduct For A Proscribed Objective.

The statute is quite specific that to hold a Union to blame under Section 8 (b) (4) (B), the Union, must not only engage in conduct prohibited under Section 8 (b) (4) (i) and/or (ii), but that such prohibited conduct be engaged in for an object prohibited under subsection (B). In the instant case, the relevant object that must be found to have exisited is the "cease doing business" object set forth in subsection (B). This Court held in *Local 761 IUE v. NLRB, (General Electric Co.)*, 366 U.S. 667, 672 et seq as follows:

> But not all so-called secondary boycotts were outlawed in §8(b)(4)(A). "The section does not speak generally of secondary boycotts. It describes and condemns specific union conduct directed to specific objectives * * *. Employees must be induced; they must be induced to engage in a strike or concerted refusal; an object must be to force or require their employer or another person to cease doing business with a third person. Thus, much that might argumentatively be found to fall within the broad and somewhat vague concept of secondary boycott is not in terms prohibited." *Local 1976, United Brotherhood of Carpenters v. Labor Board*, 357 U.S. 93, 98, 42 LRRM 2243. See also *United Brotherhood of Carpenters* (Wadsworth Building Co.), 81 N.L.R.B. 802, 805, 23 LRRM 1403.

If a Union desires that one employer stop doing business with another and makes such a request in a form that is not proscribed under (i) and (ii) there can be no violation of the statute. *N.L.R.B. v. Servette Inc.*, 377 U.S. 46.

A union has a perfect right to attempt and/or cause a cessation of business as long as it does not utilize proscribed means. On the other hand, if a union engages in conduct proscribed under Section (i) and/or (ii) such conduct is not violative of subsection (B) unless it is established that an object of the proscribed conduct was for one of the specified prohibited objectives. These legal propositions are not in dispute in this case.

The ultimate question which must be solved remains one of fact. That is, did the Union engage in any conduct for a prohibited objective. In this regard, the Union does not contend in this Court that it did not engage in proscribed conduct. The factual findings below are not now being opposed. The Union does, however, contend that an object of its conduct was not to force one employer to cease doing business with another and as a result thereof, it cannot be found to have violated the statute.

Point II

The Question Of Objective Is One Of Fact And The Finding Of The Appeals Court In This Regard Is Not Subject To Review.

It is well settled that illegal objective under Section 8 (b) (4) (B) is a question of fact and must be determined on a case to case basis. *Bedding, Curtain and Drapery Workers Union, Local 140 v. N.L.R.B.*, 2 C.A. 1968, 390 F. 2d 495.

In the instant case, the trial examiner found factually that the Union did not engage in any conduct for a proscribed objective. His factual findings were not reversed by the NLRB, but rather the Board held it is respectfully submitted that the illegal objective was present as a matter

of law.

The Appellate Court, based upon the facts in the record, found factually that the only objective which could be inferred was that the Union desired one contractor to use its influence with another to change the latter's conduct, not to terminate the relationship (A-352). The principles in the *Universal Camera* case, *supra*, require that this Court accept the findings of fact of the Appellate Court unless the standard of the substantial evidence rule applied by the Court of Appeals was grossly misapplied or misapprehended.

These factual findings this Court has held is a question which Congress has placed in the keeping of the Courts of Appeals rather then in this Court.

Nowhere, it is respectfully submitted, in the Court's opinion is there evidence of a failure of the Court to meet the tests of *Universal Camera* and accordingly for that reason it is submitted that the Court's findings be accepted.

Point III

Secondary Activity By A Union Does Not Per Se Support The Conclusion That An Objective Of The Activity Is To Force One Employer To Cease Doing Business With Another Within The Meaning Of Subsection (B) Of Section 8 (b) (4).

The thrust of the petitioners argument is that if a union engages in conduct directed towards a secondary employer regardless of its intent, it must be concluded that an object of the conduct is to force the secondary employer to cease doing business with another employer. In support of this proposition the petitioners state that if the primary employer does not accede to the union's demands then the secondary employer has no alternative but to stop doing business with the primary employer.

Petitioners also contend the Court below held that a total severence of the business relationship was necessary in order to establish a cease doing business objective within the meaning of the statute. As will be discussed in detail in this point, the argument of the petitioners in both areas is faulty.

The statute under discussion does not prohiibt all secondary activity. As this Court held in the *General Electric* case, *supra* the words "secondary boycott" do not appear in the statute. This Court held that not all secondary boycotts are prohibited by the statute, but rather only those secondary boycotts specifically set forth in the statute as being unlawful are prohiibted. This Court in several leading cases dealing with the subject matter of secondary boycotts found as a matter of fact in each of them that the union had engaged in proscribed activity to force or require one employer to terminate its contractural relationship with the other. That fact was held by the Court to exist not as a matter of law, but rather as a result of the record. This Court in *NLRB v. Denver Building Council,* 341 U.S. 675 stated that the crucial finding in that case was that an object of the union's conduct was to force or require one employer to terminate the subcontract it had with the other. This was true in *Electrical Workers v. NLRB,* 341 U.S. 694 as well as in *Carpenters Union v. NLRB,* 341 U.S. 947.

In each of these celebrated cases, this Court found as a matter of fact, that which the Petitioners herein demand be found as a matter of law per se. While these cases are of importance in the law of secondary boycotts, as a result of the findings therein, which findings are not present herein, none of those cases is in any way dispositive of the issues in this case.

If it had been found in the Court below that the Union engaged in conduct to terminate the contractual relationship between Burns and White, it would be clear under the cited cases above, that a violation of law existed.[4]

No such finding, however, exists. Indeed, the trial examiner stated to the contrary. While the Board in its reversal of the trial examiner found illegal objective, it was content to look at the effect of the conduct directed at the secondary in reaching its conclusion with respect to the object. The Court below like the trial examiner found no illegal objective.

The Court below in its decision states that without more coercive activity aimed at causing a neutral to put pressure on a primary employer is insufficient to establish a cease doing business objective. The Court is interpreting the law as it exists and is saying clearly that without a crucial factual finding as in the *Denver* case and those cases cited above, a termination of contractual relationship or a cease doing business objective cannot be established. Had the union in this case stated or had it been found as a matter of fact that the Union would require Burns to discontinue its contract with White if the latter did not accede to the Union's demands, the Court below then would have had no alternative but to find a violation of law. It refused to find *per se* that this object existed without findings of fact to establish same. This Court and other Courts have refused to follow *per se* arguments for the very reason that crucial factual findings cannot be transmitted into legal

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[4] This statement is in no way to be considered inconsistent with the Union's position herein that when a jurisdictional dispute exists the proper remedy is limited to Section 8 (b) (4) (D) and that Section 8 (b) (4) (B) is therefore inapplicable, or that the *Denver* case has been overruled as it relates to the status of contractors and subcontractors on a construction site.

findings without abuse and without the disadvantages inherent in hasty generalizations. *Local 357 Teamsters v. NLRB*, 365 U.S. 667 (1961).

For example, suppose that a Union has a dispute with a subcontractor who will not comply with its terms. Suppose further that the Union goes to the general contractor and requests that the general contractor speak to the subcontractor, the purpose thereof being to have the subcontractor comply with the general contractor's request. Suppose further that the general contractor refuses to speak to the subcontractor. Suppose further that the union says to the general contractor that it will picket the job site and cause a work stoppage unless the general contractor attempts a discussion with the subcontractor or that it does cause the general contractor's employees to strike. Whichever road the union chooses is really of no relevance inasmuch as the threat to strike or the actual strike itself would in either case be proscribed conduct under Section (ii).

In the hypothetical situation given, it is clear that the union does not desire anyone to cease doing business with anyone else but rather only desires assistance from the general contractor. The petitioner's per se theory would fail in this case.

The facts in the hypothetical do not vary from the facts in the instant case. The Union desired Burns to assist it in its dispute with White. It requested that Burns sign a contract by the terms of which White would also be bound. Burns refused. The facts establish that the union directed pressure at Burns to obtain its assistance. No factual finding was made that the union desired Burns to terminate White, and no factual finding was made that the Union desired such a result, in the alternative. While it is stated in the hypothetical that it makes no difference whether the

union threatened to strike or did, in fact strike, the petitioners contend that since the proscribed conduct took the form of a strike, disruption occurred and therefore illegal objective is present. Such a contention begs the question.

This Court held in *NLRB v. International Rice Milling*, 341 U.S. 665, that it is the object of a Union's encouragement that is proscribed by this section rather than the means adopted to make it felt. Accordingly, if there is no illegal objective in fact one cannot be found as a matter of law from the type of proscribed conduct. The petitioners rely upon a type of conduct to establish as a matter of law, the intention of that conduct. The statute does not so permit it, and the petitioner's reasoning is falacious. It's *per se* theory cannot be fortified by its falacious conclusion.

In *J. M. Miller Decorating Co.*, 156 NLRB No. 32, the Union had a dispute with a subcontractor in that the latter refused to comply with the terms of the Union. The Union approached the general contractor and threatened to picket unless the subcontractor complied. The threat to picket was proscribed conduct under (ii). However, the Board found that the union did not violate the law inasmuch as the purpose of the union was not to terminate the contractural relationship between the parties but rather that the Union was seeking to have the general contractor influence the subcontractor to have the latter comply with the union's demands.

Unlike the instant case, the Board did not contend or conclude they had the subcontractor refused to comply the union would, as an alternative, demand that the general contractor terminate its relationship with the subcontractor.

The Board did not so conclude and the supposition or conjecture which it asks this Court to adopt is not consistent with its present interpretation of the law. The

question is asked what if the union in that case struck the general contractor? The Board based upon its factual finding with regard to objective would have had no alternative but to have dismissed the complaint.

That case, it is respectfully submitted, is a perfect example of the proposition that if there is no illegal objective, in fact, illegal objective cannot be found regardless of the nature and the extent of the proscribed conduct. There are other cases which support this proposition and which are in conflict with the contentions of the petitioner. In *NLRB v. Brotherhood of Carpenters,* 261 F. 2d 166 (Wendangel & Co.) C.A. (7), the Court was faced with the exact same problem as the Court of Appeals was faced in the instant case. That Court rejected the argument that if the primary employer did not accede to the Union's demands, the union then would in the alternative request that the secondary employer cease doing business with the primary employer. The Court stated that the evidence failed to establish that the union was seeking to replace the primary employer and that an object of the union's conduct was to force or require one employer to cease doing business with another. In *Doud's v. International Longshoremen's Association,* 224 Fed. 2nd 455, 459, Circ. Judge Learned Hand in discussing object under Section 8 (b) (4) found in facts somewhat similar to the instant case, that the cease doing business objective was not present. In both cases the Courts refused to adopt a *per se* theory.

In *Retail Clerk Union v. NLRB,* 296 Fed. 2nd 368 (C.A. D.C.), the NLRB presented a *per se* argument to the Court. The union therein was charged to have engaged in conduct violative under Section 8 (b) (4) (A) and (B) of the Act as it then existed. At that time Section 8 (b) (4) (B) prohibited secondary activity to force or require an employer to recognize or bargain with a union who was

not certified by the NLRB, and Section 8 (b) (4) (A) contained the cease doing business objective. Subsequent to the amendments of the statute in 1959, that which had been formerly prohibited in subsection (A) was included in subsection (B) and at the present time subsection (B) contains both illegal objectives.

Other than the mechanical insertion of the prohibition in a different section of the Act no substantive changes have been made.

In that case, the Board found that the union violated both sections of the Act. The Court agreed that there was sufficient evidence to establish that the union engaged in illegal secondary activity for the illegal recognition object but refused to accept the Board's finding that as a matter of law, the union also engaged in illegal secondary activity for a cease doing business objective. The Board stated to the Court that all illegal recognition objectives are also illegal cease doing business objectives. The Court refused to accept that statement as being too broad and held while a union might seek recognition the Court could visualize efforts which do not seek a cease doing business objective and refused to accept the Board's proposition that a violation under one is of necessity a violation of another. See also *NLRB v. Local 1291 ILA*, 382 Fed. 2nd 375 (C.A. 3); *NLRB v. Local 164*, IBEW 388 F. 2d 105 (C.A. 3); *NLRB v. Local 825, IVOE* (Nichols Electric Co.), 326 F. 2d 213, 326 F. 2d 218 (C.A. 3 1964).

The legislative history preceding the passage of this statute contains no meaningful discussions with respect to the meaning of "cease doing business" as used therein and in no way supports the *per se* argument of the petitioners. It is submitted that the cases cited above reflect the proper interpretation of the statute.

Point IV

Where A Union Engages In Conduct Which Is A True Jurisdictional Dispute Under Section 8 (b) (4) (D) Of The Statute Such Conduct Cannot Be A Violation Of Any Other Section Of The Statute.

The Trial Examiner, the Board and the Court below found that the Union engaged in conduct violative of Section 8 (b) (4) (D) of the statute in that an object of the Union's conduct was to force White to assign work to it rather to members of another labor organization.

Board member Fanning dissented from the finding of the Board that the Union also violated Section 8 (b) (4) (B) of the Act in that in his opinion a finding of a jurisdictional dispute precludes a finding that the respondent also violated Section 8 (b) (4) (B). See *Local 5, Plumbers Union* (Arthur Venneri Co.), 137 NLRB 828, 145 NLRB 1580; *Millwrights Local Union 1102* (Dobson Heavy Haul Inc.), 162 NLRB No. 6.

Board Member Fanning citing the Supreme Court's decision in *Radio and Tel Broadcasting Engineers Local 1212 IBEW v. NLRB*, 364 U.S. 573, stated that in achieving the harmony required a mechanical interpretation of the terms primary and secondary employers cannot be utilized in a jurisdictional dispute in the building and construction industry.

He would hold that where the underlying dispute in the building and construction industry is jurisdictional the concept of secondary or neutral employers should exclude all subcontractors on the project as well as the general contractor. Applying his reasoning to the instant case, it would appear that Burns was not a neutral employer and other subcontractors performing work on the job site were

also not neutral employers. This reasoning is totally consistent with the purposes of Section 8 (b) (4) (D) and is realistic. The petitioners would argue that the holding of this Court in the *Denver* case *supra*, would preclude a finding of non-neutrality of the general contractor and the subcontractors.

It is contended that the findings in the *Denver* case are open to the accommodations suggested by Board member Fanning and more important, however, it is contended that this Court overruled the principles of *Denver* in its decision in *Carrier Corp. v. NLRB*, 376 U.S. 492 and *Electrical Workers Local 761 v. NLRB, supra.* In those cases the question of relatedness of work was the crucial determining factor. The *Denver* case, it is respectfully submitted, does not hold as a matter of law that all independent contractors on a construction site are neutral employers and *Denver* must be considered in light of the decisions in *General Electric* and *Carrier*. Support for this contention is contained in the dissenting opinion of Judge Wisdom in *Markwell and Hartz, Inc. v. NLRB*, 387, Fed. 2nd 79.

Board member Fanning's opinion in the cited cases is completely consistent with the decision of Judge Wisdom and his interpretation of *Denver*. Under the facts of the instant case, it is clear that all contractors were performing the same or similar type of work and that such work was related in accordance with the standards set forth in *General Electric* and *Carrier*.

It is therefore, respectfully submitted, that in addition to the exclusiveness of Section 8 (b) (4) (D), the Union cannot be found to have violated Section 8 (b) (4) (B), as any action engaged in was of a primary nature.

CONCLUSION

For the reasons stated herein, it is respectfully submitted that the Judgment of the Court of Appeals refusing to enforce that portion of the Order of the NLRB finding a violation of Section 8 (b) (4) (B), be affirmed.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

Statute Involved

The relevant provisions of the National Labor Relations Act, as amended, (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq*) are as follows:

> Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—
>
> • • •
>
> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—
>
> • • •
>
> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided*, That nothing contained in this clause (B) shall be construed to make

unlawful, where not otherwise unlawful, any primary strike or primary picketing;

* * *

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: * * *

(e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void: * * *

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

NO. 557

NATIONAL LABOR RELATIONS BOARD,
Petitioner
v.
LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

NO. 570

BURNS AND ROE, INC., ET AL.,
Petitioners
v.
LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO, AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, AS AMICUS CURIAE

This brief *amicus* in support of the position of Local 825, International Union of Operating Engineers, AFL-CIO, is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) with the consent of

the parties, as provided for in Rule 42 of the Rules of this Court.

"The common law of labor relations has created no concept more elusive than that of 'secondary' conduct," *Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, 386 (1969). Because this is so, it has proved extremely difficult to keep §8(b)(4)(B) of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*, the secondary boycott provision of the statute, within the bounds set by Congress. Two of the most critical components of the theory that has been evolved to delineate the contours of the secondary boycott are that §8(b)(4)(B) interdicts the use of certain means with an object of creating a secondary boycott and is not a " 'sweeping prohibition' of secondary conduct." *Jacksonville Terminal*, 394 U.S. at 387-388, and that there is a distinction between objects (i.e. the purpose or objective being pursued by the union) and effects (i.e. consequences, even where these are an inevitable by-product of the pursuit of the union's purposes) see, *Local 761, IUE* v. *NLRB (General Electric)*, 366 U.S. 667, 671-673 (1961). The argument presented by the Board in the instant case undermines both of these propositions. It is because of the destructive potential of the Board's position that the AFL-CIO seeks to present its views to this Court.

ARGUMENT

THE NLRB HAS FAILED TO PROVE, AS THE ACT REQUIRES, THAT THE UNION'S ACTIVITY IN THE INSTANT CASE HAD AN OBJECT OF CREATING A SECONDARY BOYCOTT

Section 8(b)(4)(B) of the National Labor Relations Act as amended, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*, provides that it is an unfair labor practice for a union to utilize certain means (engaging in, inducing, encouraging

strike action and refusals to handle; or threatening, restraining or coercing any person) to achieve certain ends (cessations of business), with the proviso that the foregoing prohibition does not invalidate the primary strike or primary picketing, see, *Local 1976 Carpenters* v. *NLRB (Sand Door)*, 357 U.S. 93, 98 (1958); *Steelworkers* v. *NLRB (Carrier Corp.)*, 376 U.S. 492, 496 (1964); *NLRB* v. *Servette*, 377 U.S. 46, 51-54 (1964).

The key to the meaning of §8(b)(4)(B) is that Congress's intent was to interdict the secondary boycott, see, 93 Cong. Rec. 4198 (Remarks of Sen. Taft); S. Rep. No. 105, 80th Cong. 1st Sess., 22; *Local 761 IUE* v. *NLRB (General Electric)*, 366 U.S. 667, 671-673 (1961); *Carrier*, 376 U.S. at 497-500; *National Woodwork Mfrs. Assn.* v. *NLRB*, 386 U.S. 612, 623-628 (1967); *Trainmen* v. *Jacksonville Terminal Co.*, 394 U.S. 369, 386-388 (1969). Thus, to prove a violation of that Section, the Board is required to show that a union has utilized one of the means set out in §8(b)(4)(i) or (ii) with an object of creating a secondary boycott.

In the instant case four companies, Burns and Roe, White Construction, Chicago Bridge and Iron, and Poirier and McClane, were involved in the construction of a nuclear power plant at Oyster Creek, New Jersey. White, Chicago Bridge and Poirier were the employers of all the on-site labor and all three employed operating engineers who were members of Local 825. In September 1965 White refused a Local 825 request to assign to its members the work of starting and stopping an electric welding machine and instead assigned it to members of the Iron Workers. (A. 5, 17-18)

The Board, and the court below, found that as a result of this assignment, Local 825 engaged in work stoppages directed against the three on-site contractors, and demanded

a contract from Burns and Roe, all with the object of forcing White to assign the disputed work to operating engineers in violation of §8(b)(4)(D), the jurisdictional dispute provision of the Act (A. 7, 347-350). The lower court entered an order forbidding such work stoppages and demands (A. 356-357) and that order is not challenged here.

The Board's Trial Examiner found that "All [Local 825] wanted was the work [of starting and stopping the electric welding machine], not a substitution of contractors nor a limitation of contractual relationships between the contractors," and that

> "There is not a scintilla of evidence to support [the] allegations . . . that the conduct of [Local 825], had among its objects the forcing of Chicago Bridge, Poirier and White to cease doing business with [Burns or the forcing of Burns to cease doing business with White] . . . On this record [Local 825] may be found to have two objectives, (1) to force Burns and White to agree to Local 825's contract in violation of the Board's Order in the Building Contractors' case, supra, and (2) to force White to assign the operation of the welding machine to its members. Neither objective would have been furthered by a general cessation of business among the parties." (A. 27-28, 318).

On this basis he found that there was no violation of §8(b)(4)(B).

The Board, without explicating its reasoning or adverting to the evidentiary basis for its conclusion, reversed the Trial Examiner's conclusion that Local 825's sole object was to get the work and held that one of the Union's objects was "causing a disruption of the business relationship among the various employers at the job site," the disruption being the superimposition "on [Burns] existing agreement with White [of] an added condition of performance—that the work on the welding machine had to be done by members of Local 825" (A. 8-9; Bd. Br. 17).

The court below, however, in agreement with the Trial Examiner, concluded that the union activity in question was not for an object condemned by §8(b)(4)(B):

> "[T]he circumstances [compel] the inference that the union wanted the contractor to use its influence with the subcontractor to change the subcontractor's conduct, not to terminate their relationship.
>
> "Accordingly, following our earlier decision [in NLRB v. Local 825 IUOE (Nichols Electric), 326 F. 2d 218], we hold that proof of coercive activity amounting to 'disruption of a business relationship' and aimed at causing a neutral employer to put pressure on the primary employer is insufficient, without more, to establish an effort to compel the one employer to 'cease doing business' with the other. The language of section 8(b)(4)(B) is apt to prohibit the classical secondary boycott where the attempt is made to coerce the primary employer by compelling others to stop trading or otherwise dealing with him. But we think the 'cease doing business' language is not apt to cover the objective proved here. . . ." (A. 352).

The underlying premise of the Board's brief is that §8(b)(4)(B) was designed to cover all union actions which "enroll neutral employers in a dispute not their own" (Bd. Br. 7, 9-14). Building on that premise the Board argues that in order to effectuate congressional intent it is necessary either to construe the phrase "cease doing business" to include any alteration in an existing method of doing business (Bd. Br. 8, 17-20), or to hold that any reasonably foreseeable consequence of union pressure on a neutral employer is an object of that pressure (Bd. Br. 8, 15-16).

There is an unchallenged order prohibiting pressure by Local 825 on the employers here in pursuit of work assignments. Moreover *SEC* v. *Chenery Corp.*, 318 U.S. 80, 87 (1943), holds that " the grounds upon which an administrative order must be judged are those upon which the record

discloses that its action was based." Thus the issue presented by the instant case is not whether Local 825 should be restrained from pursuing work assignments by the means it has utilized in the past, nor even whether there is a possible *rationale* which would support a finding that the conduct in question violated §§8(b)(4)(B)—it is instead whether the Board's decision is adequately based on legally defensible grounds.

1. The essential thrust of the Board's argument (Bd. Br. 14, 18) is that §8(b)(4)(B) is a "broad prohibition on secondary conduct" whose "purpose plainly includes the conduct here" and that the result reached below is therefore one which thwart's that Section's purpose.

If close linguistic analysis of the terms of §8(b)(4)(B) provided the means for ascertaining the proper interpretation of that Section this would be an easy case and affirmance of the Court of Appeals clearly required. For the Board's holding is that the term "cease doing business" includes the superimposition of any added condition of performance upon an existing method of doing business (A. 8-9). But "cease" has a recognized meaning "To leave off: bring to an end: Discontinue: Terminate" Websters Unabridged Dictionary (3rd Ed.), and it does not include a change in an ongoing relaationship since a change assumes a continuation rather than an ending. Indeed, §8(b)(4)(B) includes a prohibition on the use of the means specified in §8(b)(4)(i) and (ii) with an object of "forcing or requiring any other employer to recognize or bargain with a labor organization." This provvision makes perfect sense as long as "cease doing businesss" is given its normal meaning; it is rendered superfluous, however, by the Board's expansive construction of that phraase. Since the accepted principle is that a statute should bbe construed in a manner which preserves the meaning off all its component parts, the tradi-

tional methods of analysis leave no doubt that the Board's holding is unsound.

While these means of construction provide the most expeditious method for reaching the proper ultimate conclusion, we full agree with the Board's implicit assumption that they cannot serve here. For as the Board quite properly emphasizes, it is only after the Congressional intent which underlies §8(b)(4), and its companion §8(e), has been ascertained that the scheme of regulation inherent in these provisions can be fully comprehended, see, *National Woodwork,* 386 U.S. at 619-644. Thus our contention that the Board is in error here is not based on a disagreement concerning the insufficiency of literalism, but on this Court's decisions rejecting the Board's expansive and destructive conception of the Congressional intent. For the most recent relevant opinion, *Jacksonville Terminal,* demonstrates that all secondary conduct is not within reach of the secondary boycott prohibition (394 U.S. at 386, 387-388):

> "No cosmic principles announce the existence of secondary conduct, condemn it as an evil, or delimit its boundaries . . . And the common law of labor relations has created no concept more elusive than that of 'secondary' conduct; . . .
>
> • • •
>
> "The 1947 Taft-Hartley amendments, 61 Stat. 140, and the 1959 Landrum-Griffin amendments, 73 Stat. 545, explicitly narrowed the scope of protected employee conduct under the National Labor Relations Act; §§8(b)(4) and 8(e) of the Act proscribed a variety of secondary activities. But Congress enacted 'no . . . sweeping prohibition' of secondary conduct. Carpenters v. NLRB, 357 U.S. 93, 98 (1958) . . . Section 8(b)(4) 'does not speak generally of secondary boycotts . . . [but] describes and condemns specific union conduct directed to specific objectives.' Carpenters v. NLRB, supra, at 98."

And *National Woodwork* 386 U.S., at 625-626 spells out the point that the secondary boycott prohibition does not reach every form of pressure which "enroll[s] neutral employers in a dispute not their own;" rather, it is one of a number of prohibitions, each of limited scope, and each providing a delimited measure of protection to neutral employers.

Thus, while it is of the most vital necessity in delineating the contours of §8(b)(4)(B) to distinguish between protected primary activity (the strike over terms and conditions of employment and supportive picketing) on the one hand and secondary conduct on the other, that distinction is not sufficient. For §8(b)(4)(B) is not a " 'sweeping prohibition' of secondary conduct," *Jacksonville Terminal*, 394 U.S. at 387-388—it interdicts the use of certain means with an object of creating a secondary boycott. Therefore, the Board and the courts are required to distinguish between the secondary boycott and other forms of secondary activity as well as between the secondary boycott and the primary strike and primary picketing. This obligation cannot be sloughed off by ascribing an intent to Congress to sweep broadly in the interest of protecting neutrals. As Mr. Justice Frankfurter noted in *Local 1976 Carpenters* (357 U.S. at 99-100):

> "It is relevant to recall the Taft Hartley Act was, to a marked degree, the result of conflict and compromise between strong contending forces and deeply held views on the role of organized labor in the free economic life of the Nation and the appropriate balance to be struck between the uncontrolled power of management and labor to further their respective interests. This is relevant in that it counsels wariness in finding by construction a broad policy against secondary boycotts as such when, from the words of the statute itself, it is clear that those interested in just such a condemnation were unable to secure its embodiment in enacted law."

It follows *a fortiori* that the even broader policy the Board's brief purports to find in §8(b)(4)(B) cannot be imputed to Congress: "To be sure . . . Congress might be of opinion that greater stress should be put on . . . eliminating more and more economic weapons from the . . . [union's] grasp. But Congress' policy has not yet moved to this point" *NLRB* v. *Insurance Agents International* 361 U.S. 477, 500 (1960).

2. Under the controlling decisions of this Court the proper approach to §8(b)(4)(B) is to deal directly with the concept of union conduct with an objective of creating a secondary boycott. What is necessary is elucidation of the classic definition of the secondary boycott essayed by Judge Learned Hand in *Local 501 IBEW* v. *NLRB*, 181 F.2d 34, 37 (C. A. 2nd Cir., 1950), *affirmed* 341 U.S. 695. That definition in its entirety, including the sentence elided by the Board (Bd. Br. 13), is:

> "The gravamen of a secondary boycott, is that its sanctions bear, not upon the employer who alone is a party to the dispute, but upon some third party who has no concern in it. Its aim is to compel him to stop business with the employer in the hope that this will induce the employer to give in to his employee's demands."

The basic premise of our market economy is that those who continue to do business with each other do so because they find it mutually advantageous. The essence of the secondary boycott is the imposition of certain forms of union pressure on a neutral employer to force him to take an action which both disadvantages him and has a coercive effect on the primary. The feature which distinguishes the secondary boycott from other forms of secondary activity, such as the one with which we are concerned here, is that in the secondary boycott alone the action sought of the neutral harms him economically by depriving him of the right to

continue an advantageous relationship. On the other hand, where the union seeks a change in an existing method of doing business the action sought of the neutral does not harm him economically. Once this difference in impact on the neutral is appreciated, the Congressional decision to limit the scope of §8(b)(4)(B) to secondary boycotts is readily understood, for as Judge Hand's definition emphasizes it is the neutral's welfare which is the central concern of this provision.

As the Board notes (Bd. Br. 12-13, n. 6) the Act's prohibition of the secondary boycott authorizes it to find a violation where the union seeks a change in the neutral's method of doing business with the primary that, as a practical matter, makes it impossible for him to continue to do business with the primary. But this reinforces rather than weakens our point. For where the union demand is the equivalent of a demand to cease doing business, the policy of §8(b)(4)(B) requires its application, but where the union demand does not require the neutral to take action which is disadvantageous to him there is no reason for that Section to apply.

Thus, as Judge Prettyman recognized in *Local 770 Retail Clerks* v. *NLRB*, 296 F.2d 368, 372-373 (C.A.D.C. Cir., 1961) the fact that some changes in existing methods of doing business may come within §8(b)(4)(B) does not mean that all changes do so:

> "It may be that to force an employer to change his method of doing business with another would be to force him to cease doing business within the meaning of the clause we are now discussing, i.e., [§8(b)(4)(B)]. Certainly, however, every change in method is not equivalent to a cessation. If it be held as a matter of law that a rearrangement of methods of doing business may possibly constitute a cessation of business within the meaning of this Section, each case must depend upon its own facts. Rearrangements or changes may be

> minor or major, or part way between these extremes. A change may be so minor as not to affect the flow or nature of the business. On the other hand a change in method may be so drastic as to constitute, or necessarily cause, complete cessation of the business."

The Board makes two points in support of its contention that as a matter of law §8(b)(4)(B) reaches all changes in an existing method of doing business. First (Bd. Br. 18), it argues that any other conclusion would "nullify the broad prohibition on secondary conduct which the legislative history shows Congress to have intended." The short but complete answer to this is that this Courts decisions hold that Congress sought to ban secondary boycotts not secondary conduct generally, see pp. 7-9, *supra*. And Congress was well aware that it had simply interdicted "a strike against employer A for the purpose of forcing that employer to cease doing business with employer B . . . (with whom the union has a dispute)" S. Rep. No. 105, 80th Cong., 1st Sess., 22.

Secondarily, the Board claims (Bd. Br. 19) that its approach is necessary to prevent disguised secondary boycotts. This point is the product of an overly modest assessment of the Board's ability to establish the objectives of union conduct. A §8(b)(4)(B) object is present when a neutral is asked to cut off business relations with the primary or to take other steps which make it impossible for those relations to continue. The union's statements, together with "the nature of the acts performed shows the [union's] intent," *Seafarers* v. *NLRB (Salt Dome)*, 265 F.2d 585, 591 (C.A.D.C. Cir., 1959) quoted in *General Electric*, 366 U.S. at 674. And the Board is of course free to draw reasonable inferences from what the union has said and done taken against the background of the business relationship between the neutral and the primary and the actions other than a cessation of business open to the neutral.

Thus, just as the Board has mastered the task of distinguishing between primary and secondary objects through the traditional method of ascertaining motive, see, *Local 861 IBEW (Plauche Electric)*, 135 NLRB 250 (1962), there can be no doubt that the task of distinguishing between the secondary boycott and other forms of unlawful or unprotected activity is also well within its competence.

At an earlier point in its history the Board took the view that the task of distinguishing between primary and secondary picketing at a common situs was beyond its competence. It reacted by creating a rule of law which effectively prohibited common situs picketing whether primary or secondary, see, *Brewery Drivers (Washington Coca-Cola Bottling Works)* 107 NLRB 299 (1953), overruled in, *Plausche Electric*, 135 NLRB at 252-254. The courts refused to accept *Washington Coca-Cola*. As Judge Rives stated in *NLRB* v. *General Drivers (Otis Massey)*, 225 F.2d 205, 209 (C. A. 5th Cir., 1955) its defect was that it "elevat[ed] the Board formulated 'criteria' . . . to a vantage point from which it could in effect circumvent the statute . . ." The Board's approach here is another attempt to "in effect circumvent the statute" in the name of effective enforcement of the secondary boycott prohibition. The prophylactic rule announced in this case suffers from exactly the same defect as *Washington Coca Cola*—it does not have an adequate predicate in the Act. For this reason it, like *Washington Coca Cola*, must be rejected, compare, *Local 357 Teamsters* v. *NLRB*, 365 U.S. 667 (1961).

Unless Judge Prettyman's view in *Local 770 Retail Clerks* is rejected the conclusion reached by the Trial Examiner and the court below in the instant case must be sustained. The change in the existing business arrangements sought by Local 825 was a contract requiring White to assign the work of starting and stopping its welding

machine to an operating engineer. There is nothing to indicate that the signing of such a contract would work to the disadvantage of Burns, Chicago Bridge or Poirier, thereby forcing them to sever their relationship with White. Indeed, Local 825 represented employees of all three of the on-site contractors. Thus, a cessation of any of the business relationships between these employers and Burns would have had an adverse impact on the striking union out of all proportion to the gain sought. This being so, it is, as the Trial Examiner noted (A. 28), "totally irrational" to ascribe to Local 825 an intent to create a secondary boycott.

3. In apparent recognition of the weakness of the contention that an object to alter an existing business arrangement is always an illegal object, the Board's Brief, pp. 8, 15-16, places heavy reliance on the argument that it is sufficient to establish a §8(b)(4)(B) violation to show that a cessation of business was a reasonably foreseeable consequence of Local 825's action.

Even if this argument had merit, which as we show below it does not, see pp. 14-20, *infra*, it could not be utilized as support for the Board's decision. For there is not a word in its opinion to show that this *rationale*, which has the most critical implications for the development of secondary boycott law, is the Board's own. The Board's sole explanation for the reversal of the Trial Examiner's conclusion was predicated exclusively on its "any alteration of an existing business arrangement" theory. The "reasonably foreseeable consequence" theory is simply a post hoc rationalization of appellate counsel. Thus, as this Court stated in *Metropolitan Life Ins. Co* v. *NLRB*, 380 U.S. 438, 442-443 (1965):

> "Due to the Board's lack of articulated reasons for the decisions in and distinctions among these cases, the Board's action here cannot be properly reviewed.

> When the Board so exercises the discretion given to it by Congress, it must 'disclose the basis of its order' and 'give clear indication that it has exercised the discretion with which Congress has empowered it. 'Phelps Dodge Corp. v. Labor Board, 313 US 177, 197. See Burlington Truck Lines v. United States, 371 US 156, 167-169; Interstate Commerce Comm's v. J-T Transport Co. 368 US 81, 93. Although Board counsel in his brief and argument before this Court has rationalized the different unit determinations in the variant factual situations of these cases on criteria other than a controlling effect being given to the extent of organization, the integrity of the administrative process requires that 'courts may not accept appellate counsel's post hoc rationalizations for agency action . . .' Burlington Truck Lines v. United States, supra, 371 US at 168; see Securities & Exchange Comm'n v. Chenery Corp. 332 US 194, 196. For reviewing courts to substitute counsel's rationale or their discretion for that of the Board is incompatible with the orderly function of the process of judicial review. Such action would not vindicate, but would deprecate the administrative process for it would 'propel the court into the domain which Congress has set aside exclusively for the Administrative agency.' Securities & Exchange Comm'n v. Chenery Corp., supra, 332 US at 196."

4. The "reasonably foreseeable consequences" theory is without merit though it is presented as one from authority —this Court's decisions in *NLRB* v. *Erie Resistor Corp.*, 373 U.S. 221, 227 (1963), and *NLRB* v. *Denver Building Trades Council*, 341 U.S. 675 (1951).

In *NLRB* v. *Brown*, 380 U.S. 278, 287 (1965), Mr. Justice Brennan explained that:

> "In Labor Board v. Erie Resistor Corp., supra, we held that an employer's action in awarding superseniority to employees who worked during a strike was discriminatory conduct that carried with it its own indicia of improper intent. The only reasonable inference that could be drawn by the Board from the award

> of super-seniority—balancing the prejudicial effect upon the employees against any asserted business purpose—was that it was directed against the striking employees because of their union membership . . ." See also, *NLRB* v. *Great Dane Trailers*, 388 U.S. 26 (1967).

Thus *Erie Resistor* stands for the proposition that there are classes of conduct, such as the award of superseniority, as to which the only reasonable inference that could be drawn is that the employer was motivated by an improper intent.

In the instant case the class of conduct in question is a work stoppage by secondary employees growing out of a work assignment dispute. It cannot be said that the only reasonable inference to be drawn from a work stoppage by secondary employees growing out of a work assignment dispute is that the union intended to create a secondary boycott. This is demonstrated with consumate clarity by the opinions in *NLRB* v. *Local 825, IUOE (Nichols' Electric Co.)*, 326 F. 2d 213 and 326 F.2d 218 (C.A. 3rd Cir., 1964).

In *Nichols*, there was a dispute over the assignment by that employer of the operation of a power auger to members of the IBEW rather than Local 825. On two different occasions this dispute lead to work stoppages by operating engineers employed by two neutral employers (Elmhurst and Selby). The first stoppage occurred when "a number of operating engineers gathered around the vicinity of the power auger" while a Local 825 shop steward argued with a Nichols' foreman over the assignment; the second took place 6 days later when the Local 825 shop steward "summoned various operating engineers employed by Elmhurst and Selby and told them to prevent the operation of the auger. The operating engineers gathered around the machine and cited their contract with Selby as indicating that they were entitled to the work," 326 F.2d at 215.

On these facts the Board found both §8(b)(4)(D) and §8(b)(4)(B) violations. As to the latter it reasoned:

> "Thus, Selby and Elmhurst, in order to keep their employees at work, were faced with the choice of ceasing to do business with Nichols or having the work done in some other manner. Although the work was finally accomplished manually by Nichols at the request of Shelby's superintendent, Kangas, there is no indication that Respondent suggested this or any other alternative. We conclude, then, that an object of the strike was to force Selby and Elmhurst to cease doing business with Nichols." 138 NLRB at 543.

The court enforced the §8(b)(4)(D) finding but denied the Board's petition for enforcement of its §8(b)(4)(B) order:

> "The undisputed evidence . . . shows that the operating engineers left their jobs for the purpose of preventing the electricians employed by Nichols from operating the power auger and winch. There is simply no evidence that an object of this action was to force their own employers to cease doing business with Nichols. To put the matter another way, the record conclusively demonstrates that the work stoppage was merely an incidental consequence of the efforts of the engineers to prevent the operation of the power equipment by the electricians, and to compel Nichols to assign the work to them. In order to do this they had to leave their jobs, but thi sdoes not mean that in doing so they sought to compel their employers to cease doing business with Nichols. . ."
>
> "In its brief the Board argues that 'by virtue of the pressure put upon Nichols by the secondary employees' work stoppage, Nichols was forced to forsake the efficiency and economies offered by the power-driven auger, and had to fall back upon the slower and costlier method of digging each hole with manual labor.' This argument misses the mark, for to constitute unlawful secondary activity the union must exert pressure upon

the secondary employer with an object of forcing him to cease doing business with the primary employer."

* * *

"In support of its position the Board cites Retail Clerks Union Local 770 v. National Labor Relations Board, 111 U.S. App. D.C. 246, 296 F. 2d 368 (1961). But that case aids the position of respondent, for there the court held its essential that the Board provide factual support for its conclusion that an object of the work stoppage was to force a cessation of business." 326 F. 2d at 220-221.

In addition there can be no doubt that the decision in *Denver Building Trades* does not, as the Board claims, represent an application of *Erie Resistor* in the §8(b)(4) context. The question in *Denver Building Trades* was whether union picketing protesting "This Job Unfair To Denver Building and Construction Trades Council," taken against all the evidence of the background which led to the placing of the picket (see 341 U.S. at 677-679), was primary activity as the Council claimed, or activity designed to create a secondary boycott. The Trial Examiner, the Board and this Court concluded that a canvass of all the evidence supported the conclusion that the union's true object was the latter. There is absolutely no indication in this Court's opinion that it was relying on the effects of the picketing to determine the Council's object. The Court's statement that "the Council's strike, in order to attain its ultimate purpose [to have the work done by union men] must have included among its objects that of forcing Doose & Lintner to terminate [Gould and Preisner] subcontract" (341 U.S. at 688) is not as the Board would have it, an example of inferring objects from effects. For the evidence left no doubt as to the Council's desires:

"Fisher [the IBEW's business agent] said that he was willing [to sign Gould and Preisner to a union contract] but that Mr. Gould and Mr. Preisner were not willing to

sign up and that he wanted 'to get as much business away from their firm as possible.'" 82 NLRB at 1206.

The argument from *Denver Building Trades* was squarely rejected in *NLRB* v. *Carpenters (Wendnagel & Co.)*, 261 F. 2d 166 (C.A. 7th Cir., 1958). There the union had a work acquisition object which it pursued by a strike against neutral employers at a construction job site. The court held that there was no secondary boycott since there was no "evidence that the object of respondents was to force Anderson [the neutral general contractor] to replace Wendnagel with a different subcontractor who would use members of the Carpenters." 261 F. 2d at 171. It then stated:

> "The Board is mistaken in relying on N.L.R.B. v. Denver Bldg. & Const. Trade Council, 341 U.S. 675. In that case there was a long standing labor dispute between the Building Council and Gould & Preisner due to the latter's practice of employing *non-union* men on construction jobs in Denver. Doose & Lintner was the general contractor for the construction of a commercial building. Gould & Preisner was a subcontractor thereon and its employees were the only non-union workmen on the project. The Building Council commenced a strike at the project and Doose & Lintner notified Gould & Preisner to get off the job. . . .
>
> • • •
>
> "In contrast, in the case at bar we are not dealing with a non-union subcontractor. Wendnagel's coopers are union men. No reason existed in the case at bar for the replacement of Wendnagel, and respondents never demanded it. That was not their object in striking against Fruin-Colnon. They demanded only that members of Carpenters be employed by Wendnagel on the work in question rather than members of Coopers. That was their object in striking against Fruin-Colnon. They believed that their strike, by means of Anderson's influence over Wendnagel, would cause the replacement of the coopers by respondents' carpenters." 261 F.2d at 171-172.

5. The logical foundations of the "reasonably foreseeable consequences" argument are as unsound as its supposed underpinnings in authority are spurious. As he himself recognized in *Local 501, IBEW,* 181 F2d at 37-38, Judge Hand's definition is an insufficient guide to the application of §8(b)(4)(B) unless a distinction is made between objects (i.e., the purposes or objectives being pursued by the union) and effects (i.e., consequences, even where these are an inevitable by-product of the pursuit of the union's purposes). The basic means open to unions to press their demands are the strike and the picket line. In a variety of cases utilization of these means results in sanctions on a neutral employer which compel him to stop business with the primary employer. For example, in *Carrier* the union engaged in primary picketing directed at those approaching a struck plant "whose mission is selling, delivering or otherwise contributing to the operations which the strike is endeavoring to halt," 376 U.S. at 499. Yet that picketing to the extent successful, obviously imposed sanctions (refusals to make deliveries by his employees) on a neutral to compel him to stop business with the primary.

Thus, if §8(b)(4)(B) is to be kept within bounds compatible with the overall structure of the Act, the Board cannot be said to have proved its case simply by showing that a strike or a picket line has secondary effects. As Judge Prettyman explained in *Salt Dome,* 265 F.2d at 590, cited with approval in *General Electric,* 366 U.S. at 673:

> "The determining factor is the objective, the intendment, of the strike. The statute forbids a strike if an object of the strike is to induce a person not the primary employer or an employee of his to take some action such as ceasing to do business with the primary employer. The cases recognize the very practical fact that, intended or not, sought for or not, aimed for or not, employees of neutral employers do take action

> sympathetic with strikers and do put pressure on their own employers . . . The question is the objective. The difference [between legality and illegality] is in whether the effect on [the neutral's] workers was an objective of the strike or was merely an incident of it." See also, *(Otis Massey)*, 225 F.2d at 208-211; *Local 770 Retail Clerks*, 296 F.2d at 373; *Houston Insulation Contractors Assn.* v. *NLRB*, 357 F.2d, 187 (C.A. 5th Cir., 1966), affirmed 386 U.S. 664.

The Board's brief, while not adverting to the well settled line between objects, purposes and objectives on the one hand and effects, incidents and consequences on the other, recognizes it by limiting its argument to the proposition that "so long as the strike has no primary aspects . . . it suffices [to prove a violation of §8(a)(4)(B)] that the cessation of business is one of the reasonably foreseeable consequences of a union's actions" (Bd. Br. 8). Without the qualifications excepting strikes with a primary aspect there can, of course, be no doubt that the foregoing would be contrary to the theory of *General Electric*. For the Court there stated that §8(b)(4) "could not be literally construed; otherwise it would ban most strikes historically considered to be lawful, so-called primary activity," because as the Board had explained:

> "'A strike, by its very nature, inconveniences those who customarily do business with the struck employer. Moreover, any accompanying picketing of the employer's premises is necessarily designed to induce and encourage third persons to cease doing business with the picketed employer . . .' [*Pure Oil*], 84 NLRB at 318." 366 U.S. at 675.

Thus, as both *General Electric* and *Carrier* indicate, secondary consequences are often the inevitable and inextricable by-product of the pursuit of primary objectives. This being so, it is impermissible to infer an unlawful §8(b)(4)(B) object from the reasonably foreseeable consequence of the union action. Where the union is engaged in a primary

strike or picketing, a finding of a secondary boycott object must be supported by some evidence other than the fact that there were secondary consequences, see, *Jacksonville Terminal,* 394 U.S. at 389-390. This is necessary in order to preserve the statutory dividing line between protected primary activity and the secondary boycott. As this Court stated in a related context:

> "Had Congress thought one or the other [policy] overriding, it would doubtless have found words adequate to express that judgment. It did not do so; it accommodated both interests, doubtless in a manner unsatisfactory to the extreme partisans of each, by drawing a line it thought reasonable. It is not for the administrators of the Congressional mandate to approach either side of that line grudgingly." *Local 1424 Machinists* v. *NLRB (Bryan Mfr. Co.),* 362 U.S. 411, 418 n. 7 (1960).

The only escape from the foregoing argument is that while the Board is not free to extend §8(b)(4)(B) beyond proper bounds at the expense of protected primary activity, it is free to do so at the expense of creating overlapping violations for conduct which is otherwise unlawful or unprotected. To sanction this result, however, would turn §8(b)(4)(B) from a prohibition of the secondary boycott to a "'sweeping prohibition' of secondary conduct" and as this Court's decisions from *Local 1976 Carpenters* to *Jacksonville Terminal* demonstrate, the Act contains no such prohibition.

CONCLUSION

For the above stated reasons, as well as those advanced by Local 825, the judgment below should be affirmed.

Respectfully submitted,

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June, 1970

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

NATIONAL LABOR RELATIONS BOARD *v.* LOCAL 825, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL–CIO

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 40. Argued November 18, 1970—Decided January 12, 1971*

A general contractor (Burns) subcontracted construction work to three companies, all of which employed operating engineers who belonged to respondent union. That union, disputing the assignment by one of the subcontractors (White) of an operation involving an electric welding machine to members of another labor organization, advised Burns that all respondent's members on the jobsite would strike unless Burns bound itself and the subcontractors to give respondent jurisdiction over electric welding machines. The union went on strike when the employers refused to accede to its demands. After an arbitrator, to whom Burns had referred the matter, held that there was no reason to change the disputed work assignment, respondent union physically prevented operation of the welding machine. Thereafter an unfair labor practices proceeding against the union was brought. The National Labor Relations Board (NLRB) found that by inducing the subcontrators' employees to strike to force White to assign the disputed work to the operating engineers the union had violated § 8 (b) (4) (D) of the National Labor Relations Act, which bars strikes for the object of "forcing . . . any employer to assign particular work to employees in a particular labor organization . . . rather than employees in another labor organization . . . ." The NLRB also found that by applying economic pressure on the neutral employers the union had violated § 8 (b) (4) (B), which bars a union from exerting coercive pressure on a neutral or secondary employer where "an object thereof" is forcing

*Together with No. 42, *Burns and Roe, Inc., et al.* v. *Local 825, International Union of Operating Engineers, AFL–CIO.*

Syllabus

him, *inter alia*, "to cease doing business with any other person." On the NLRB's petition for enforcement, the Court of Appeals sustained the NLRB's § 8 (b) (4) (D) finding but set aside its § 8 (b) (4) (B) finding, concluding that the union's objective was to force Burns "to use its influence with the subcontractor to change the subcontractor's conduct, not to terminate their relationship." *Held:*

1. In seeking to force Burns to bind all the subcontractors on the project to a particular form of job assignments and implying by its demands that Burns would have to force a change in White's policy or terminate White's contract, respondent union engaged in flagrant secondary conduct within the prohibition of § 8 (b) (4) (B). Pp. 5–8.

2. Section 8 (b) (4) (D) is not an exclusive remedy for secondary pressure aimed at involving a neutral employer in a jurisdictional dispute over work assignments made by the primary employer. P. 8.

410 F. 2d 5, reversed and remanded.

MARSHALL, J., delivered the opinion of the Court, in which BURGER, C. J., and BLACK, HARLAN, BRENNAN, WHITE, and BLACKMUN, JJ., joined. DOUGLAS, J., filed a dissenting opinion, in which STEWART, J., joined.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 40 AND 42.—OCTOBER TERM, 1970

National Labor Relations Board, Petitioner, 40 *v.* Local 825, International Union of Operating Engineers, AFL–CIO. Burns and Roe, Inc., et al., Petitioners, 42 *v.* Local 825, International Union of Operating Engineers, AFL–CIO.	On Writs of Certiorari to the United States Court of Appeals for the Third Circuit.

[January 12, 1971]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

In this case we are asked to determine whether strikes by Operating Engineers at the site of the construction of a nuclear power generator plant at Oyster Creek, New Jersey, violated § 8 (b)(4)(B) [1] of the National Labor

[1] "Sec. 8 (b) It shall be an unfair labor practice for a labor organization or its agents—

. . . . .

"(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise, handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or

Relations Act. Although the National Labor Relations Board found the strikes to be in violation of this section, the Court of Appeals refused to enforce the Board's order.[2] We believe the Court of Appeals construed the Act too narrowly. Accordingly, we reverse and remand the case for consideration of the propriety of the Board's order.

The general contractor for the project, Burns and Roe, Inc., subcontracted all of the construction work to three companies—White Construction Company, Chicago Bridge and Iron Company, and Poirier and McClane Corporation. All three employed operating engineers who were members of Local 825, International Union of Operating Engineers. But White, unlike Chicago Bridge and Poirier, did not have a collective-bargaining agreement with Local 825.

In the latter part of September 1965, White installed an electric welding machine and assigned the job of pushing the buttons that operated the machine to members of the Ironworkers Union, who were to perform the

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restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

. . . . . .

"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producers, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: *Provided*, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing . . . ." 29 U. S. C. § 158 (b)(4)(B).

[2] *NLRB* v. *Local No. 825, International Union of Operating Engineers*, 410 F. 2d 5 (CA3 1969).

actual welding. Upon learning of this work assignment, Local 825's job steward and its lead engineer threatened White with a strike if operating engineers were not given the work. White, however, refused to meet the demand. On September 29, 1965, the job steward and lead engineer met with the construction manager for Burns, the general contractor. They informed him that the members of Local 825 working at the jobsite had voted to strike unless Burns signed a contract, which would be binding[3] on all three subcontractors as well as Burns, giving Local 825 jurisdiction over all power equipment, including electric welding machines, operated on the jobsite. On October 1, after White and Burns refused to accede to the demands, the operating engineers employed by Chicago Bridge and Poirier as well as those employed by White walked off the job. They stayed out from 8:00 a. m. to 1:00 p. m., returning to work when negotiations over their demands started.

On October 6, Burns submitted the work assignment dispute to the National Joint Board for the Settlement of Jurisdictional Disputes for the Construction Industry.[4]

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[3] The proposed contract provided in part:

"This Agreement shall bind all sub-contractors while working for an Employer who is a party to this Agreement. Any Employer who sublets any of his work must sublet the same subject to all the terms and conditions of this Agreement.

"The Employer agrees that he will not subcontract any of his work, which is covered by the terms of this Collective Bargaining Agreement, to any subcontractor, unless said subcontractor agrees in writing to perform said work subject to all terms and conditions of this Agreement between the Employer and the Union, including an agreement to submit work jurisdictional disputes for determination as provided below."

[4] A private organization established by construction industry labor unions to arbitrate jurisdictional disputes.

The same day, Local 825 threatened Burns and all the subcontractors with another work stoppage unless the contracts were signed and the work transferred to the operating engineers. The employers again refused, and the operating engineers walked off the project. This strike lasted from October 7 to October 11.

On October 20, the Joint Board notified the parties that there was no reason to change the assignment of the disputed work. Local 825 did not accept this resolution; and when the welding machine was started on November 4, the operating engineers surrounded the machine and physically prevented its operation. On November 8, the NLRB Regional Director obtained from the United States District Court a temporary injunction under § 10 (*l*)[5] of the Act restraining the union from coercing a cessation of business on the project or to compel White to change the work assignment.[6]

An unfair labor practice proceeding against Local 825 subsequently ensued. The Board found that the union had violated § 8 (b) (4) (D)[7] of the Act by inducing

[5] 29 U. S. C. § 160 (*l*).

[6] The Operating Engineer's activity did not stop with the issuance of the injunction. White's engineers struck again on November 17, this time ostensibly over a dispute concerning the number of employees assigned to operate a recently installed electrical pump. Local 825 representatives in a discussion with White said, however, that this walkout "was more or less because of the electric welding machine being in operation." The strike lasted until December 21. Of course the activity like that on November 4 did not involve § 8 (b) (4) (B) violations since only the engineers working for White were involved.

[7] "Sec. 8 (b) It shall be an unfair labor practice for a labor organization or its agents—

. . . . . .

"(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course

employees of White, Chicago Bridge, and Poirier to strike to force White to take the disputed work away from the Ironworkers and assign it to the Operating Engineers. The Court of Appeals' approval of this finding is not questioned here. But the Board's finding that Local 825's encouragement of the Chicago Bridge and Poirier employees to strike and the union's coercion of Burns violated § 8 (b)(4)(B) of the Act was not approved by the Court of Appeals and is in issue here.

I

Congressional concern over the involvement of third parties in labor disputes not their own prompted § 8 (b)(4)(B). This concern was focused on "secondary boycotts," [8] which was conceived of as pressure brought to bear not "upon the employer who is a party [to a dispute], but upon some third party who has no concern in it" [9] with the objective of forcing the third party to

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of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

. . . . . .

"(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work . . . ." 29 U. S. C. § 158 (b)(4)(D).

[8] See *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U. S. 369, 386–390 (1969); *National Woodwork Mfgrs. Assn.* v. *NLRB*, 386 U. S. 612, 624 (1967).

[9] *Electrical Workers, Local 501* v. *NLRB*, 181 F. 2d 34, 37 (CA2 1950), aff'd, 341 U. S. 694.

bring pressure on the employer to agree to the union's demands.[10]

Section 8 (b)(4)(B) is, however, the product of legislative compromise and also reflects a concern with protecting labor organizations' right to exert legitimate pressure aimed at the employer with whom there is a primary dispute.[11] This primary activity is protected even though it may seriously affect neutral third parties. *Steelworkers* (Carrier Corp.) v. *NLRB*, 376 U. S. 492, 502 (1964); *Electrical Workers* (General Electric) v. *NLRB*, 366 U. S. 667, 673 (1961).

Thus there are two threads to § 8 (b)(4)(B) that require disputed conduct to be classified as either "primary" or "secondary." And the tapestry that has been woven in classifying such conduct is among the labor law's most intricate. See *Brotherhood of Railroad Trainmen* v. *Jacksonville Terminal Co.*, 394 U. S. 369 (1969). But here the normally difficult task of classfying union conduct is easy. As the Court of Appeals said, the "record amply justifies the conclusion that [Burns and the neutral subcontractors] were subjected to coercion in the form of threats or walkouts, or both." 410 F. 2d, at 9. And as the Board said, it is clear that this coercion was designed "to achieve the assignment of [the] disputed work" to operating engineers. 162 N. L. R. B., at 1621.

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[10] The House Conference Report explained this idea:

"Thus it was made an unfair labor practice for a union to engage in a strike against employer A for the purpose of forcing that employer to cease doing business with employer B. Similarly it would not be lawful for a union to boycott employer A because employer A uses or otherwise deals in the goods of, or does business with employer B." H. R. Rep. No. 510, 80th Cong., 1st Sess., at 43 (1947).

[11] The section contains a specific proviso, which was added in the 1959 amendment to the Act, that protects a "primary strike or primary picketing" that is "not otherwise unlawful." See n. 1, *supra*.

Local 825's coercive activity was aimed directly at Burns and the subcontractors that were not involved in the dispute. The union engaged in a strike against these neutral employers for the specific, overt purpose of forcing them to put pressure on White to assign the job of operating the welding machine to operating engineers. Local 825 was not attempting to apply the full force of primary action by directing its efforts at all phases of Burns' normal operation as was the case in *Steelworkers* (Carrier) v. *NLRB*, 376 U. S. 492 (1964), and *Electrical Workers* (General Electric) v. *NLRB*, 366 U. S. 677 (1961). It was instead using a sort of pressure that was unmistakably and flagrantly secondary. *Labor Board* v. *Denver Building & Construction Trade Council*, 341 U. S. 675 (1951).

The more difficult task is to determine whether one of Local 825's objectives was to force Burns and the other neutrals to "cease doing business" with White as § 8 (b)(4)(B) requires. The Court of Appeals concluded that the union's objective was to force Burns "to use its influence with the subcontractor to change the subcontractor's conduct, not to terminate their relationship" and that this was not enough. That court read the statute as requiring that the union demand nothing short of a complete termination of the business relationship between the neutral and the primary employer. Such a reading is too narrow.

Some disruption of business relationships is the necessary consequence of the purest form of primary activity. These foreseeable disruptions are, however, clearly protected. *Steelworkers* (Carrier), 376 U. S., at 492; *Electrical Workers* (General Electric), 366 U. S., at 682. Likewise, secondary activity could have such a limited goal and the foreseeable result of the conduct could be, while disruptive, so slight that the "cease doing business" requirement is not met.

Local 825's goal was not so limited nor were the foreseeable consequences of its secondary pressure slight. The operating engineers sought to force Burns to bind all the subcontractors on the project to a particular form of job assignments. The clear implication of the demands was that Burns would be required either to force a change in White's policy or to terminate White's contract. The strikes shut down the whole project. If Burns was unable to obtain White's consent, Local 825 was apparently willing to continue disruptive conduct that would bring all the employers to their knees.

Certainly, the union would have preferred to have the employers capitulate to its demands; it wanted to take the job of operating the welding machines away from the Ironworkers. It was willing, however, to try to obtain this capitulation by forcing neutrals to compel White to meet union demands. To hold that this flagrant secondary conduct with these most serious disruptive effects was not prohibited by § 8 (b)(4)(B) would be largely to ignore the original congressional concern. *NLRB* v. *Carpenters Dist. Council*, 407 F. 2d 804, 806 (CA5 1969).

II

In addition to its argument that § 8 (b)(4)(B) does not cover its conduct, Local 825 argues that § 8 (b)(4)(D) provides the exclusive remedy. Clearly, § 8 (b)(4)(D) is, as the Board and Court of Appeals held, applicable. But that section is aimed at protecting "the employer trapped between the . . . claims" of rival unions. *National Woodwork Mfgrs. Assn.*, 386 U. S., at 625. Although § 8 (b)(4)(D) also applies to neutrals, the basic purpose is different from that of § 8 (b)(4)(B). The practices here were unfair under both sections and there is no indication that Congress intended either section to have exclusive application.

III

Since the Court of Appeals did not believe that § 8 (b)(4)(B) was applicable, it did not consider the propriety of the portion of Board's order relating to that section. But the order was not narrowly confined to the conduct involved here; so we must remand this case for the Court of Appeals to consider whether the order is necessary to further the goals of the Act. See *Communications Workers* v. *NLRB*, 362 U. S. 479 (1960); *NLRB* v. *Express Publishing Co.*, 312 U. S. 426 (1941).

Reversed and remanded.

SUPREME COURT OF THE UNITED STATES

Nos. 40 AND 42.—OCTOBER TERM, 1970

National Labor Relations Board, Petitioner, 40 *v.* Local 825, International Union of Operating Engineers, AFL–CIO. Burns and Roe, Inc., et al., Petitioners, 42 *v.* Local 825, International Union of Operating Engineers, AFL–CIO.	On Writs of Certiorari to the United States Court of Appeals for the Third Circuit.

[January 12, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE STEWART concurs, dissenting.

If we take the words of the Act, rather than what the courts have interpolated, and lay them alongside the facts of the case, I do not see how we can fairly say that Local 825 engaged in an "unfair labor practice" within the meaning of § 8 (b)(4)(b). Local 825 did use coercion to get jobs from White for its workers. The Board termed it "causing a disruption of the business relationship among the various employees at the jobsite," which it held was within the ban of § 8 (b)(4)(B) since Local 825's aim, though not "a total cancellation of a business relationship" with White, constituted a "cease doing business" purpose. The Board said: ". . . an object of the Respondent was to force Burns to cease doing business with White, and to force Chicago Bridge and Poirier to cease doing business with Burns in order to compel Burns to cease doing business with White."

Yet as the Trial Examiner found ". . . Respondent never indicated it wanted White off the job—it wanted to harass White to gain compliance with its requests. Nor was any demand made upon Burns to cease doing business with White. . . . All Respondent wanted was the work, not a substitution of contractors nor a termination of contractual relationships between the contractors."

Our question turns not on the findings of fact but on the question of law which emerges, whether what was done had as its purpose to induce the general contractor and subcontractor to "cease doing business" with White.

We held in *Labor Board* v. *Denver Bldg. Council*, 341 U. S. 675, 688, that an effort "to force" a subcontractor in the position of White "off the job" satisfied the "cease doing business" test though that purpose was not the exclusive one. A strike to achieve that end, we held in *Electrical Workers* v. *Labor Board*, 341 U. S. 694, 700, also brought the coercive means within the same ban. And in *Steelworkers* v. *Labor Board*, 376 U. S. 492, 496, we held that a union on strike against its employer, Carrier, violated the "cease doing business" ban, when it picketed at an entrance used exclusively by railroad personnel "to induce the railroad to cease providing freight service to Carrier for the duration of the strike."

The case here is plainly different. The aim was not to freeze out White or to close him down for an hour or for the duration. It was merely to get the work, whose assignment he controlled, for members of Local 825. The case is therefore the classical jurisdictional conflict covered by § 8 (b)(4)(D) which makes "forcing or requiring any employer to assign particular work to employees in a particular labor organization" an unfair labor practice.

The Board properly issued a cease-and-desist order concerning the jurisdictional dispute condemned by § 8

(b)(4)(D). The fact that (D) may be involved does not necessarily mean that (B) may not also be involved, as the two are not "mutually exclusive." Local 5, United Assoc. of Journeymen, 137 N. L. R. B. 828, 832.* But where the facts show only the jurisdictional dispute condemned by § 8 (b)(4)(D) and no plan to close down White either permanently or for a day or even an hour, we should not only hold that § 8 (b)(4)(B) is not satisfied. We should also hold that (D) cannot do service for (B) where there is no element of "ceasing" to do business present.

*And see Local 5, Plumbing & Pipe Fitting Industry, 145 N. L. R. B. 1580; Millwright Local 1102, 162 N. L. R. B. 217.